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INDEX

TO THE

REPORTS OF THE COMMITTEES

OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE THIRTY-SIXTH CONGRESS.

IN TWO VOLUMES.

Vol. 1.—No. 1 to 204, inclusive.
Vol. 2.—No. 205 to 284, inclusive.

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INDEX

TO

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FIRST SESSION OF THE THIRTY-SIXTH CONGRESS,

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Subject.	Volume.	Number.
A.		
Abbott, Daniel	I	69
Adams, Jeffrey T	I	204
Alexander, Dr. C. F	II	221
Alexander, Mira M	II	224
Allen, Mrs. Ann	I	36
Allen, William	I	15
Alvord, Major Benjamin	I	171
Anderson, Charles E	I	136
Angus, Mrs. A. W., (H. R. No. 267)	II	279
Angus, Ann W., (H. R. No. 267)	I	195
Army of the United States, in relation to the organization of the several departments and corps of, (S. B. No. 61)	I	21
Attorney General, (Ex. Doc. No. 30,) of the 17th February, 1859, in relation to the ownership by the United States of certain lots in the city of San Francisco called "fifty vara lots"	I	12
B.		
Baldwin, A. S	II	253
Bank notes, by corporations and others within the District of Columbia, to prohibit the issue and circulation of, &c	I	9
Barnard, George G	I	101
Barnes, Ford	II	252
Baton Rouge, petition of the mayor and council of the city of	I	172
Bell, James	I	72
Berryman, Otway H	I	40
Bigelow, Jacob	I	131
Blocker, R. F., E. J. Gurley, and J. F. Davis	I	27
Boggs, W. Brenton	II	266
Bounties to vessels employed in the bank or other codfisheries, in relation to the repealing all	I	41
Bowhay, William P	I	169
Bowman, Angelina C	I	91
Bowman, George W., late Superintendent of Public Printing, inquiry in relation to moneys alleged to have been received by him from the Printer of the Senate or the executive departments, during the last Congress, &c.; also, testimony in relation thereto, with the views of the majority and minority, and journal of the special committee	II	205

Digitized by Google

Subject.	Volume.	Numbe
Brent, Jane W., widow of Thomas Lee Brent	II	2
Brown, jr., Eliphalet	I	1
Brown, John P	I	1
Brownson, Canada, and Mary Everts	I	
Butterworth, Samuel F., and Arnold Harris	I	
C.		
California, joint resolution of the legislature of, asking Congress to cede and donate a tract of land known as the "Colorado desert" to that State, &c	II	2
California, resolutions of the State of, in favor of the establishment of additional land districts in that State	II	2
California Stage Company, asking compensation for extra services rendered on thirteen routes in California	II	2
Cannon, Mrs. Olivia W	I	
Carleton, Silas, and Mathew Johnson	II	2
Carpenter, Elias	I	
Carter, John C	I	
Cartwright, C. W., and others	II	2
Castor, Mary Elizabeth	I	1
Chamber of Commerce, New York	II	2
Childs, Mrs. A. L	I	
Choctaw tribe of Indians, report of the Secretary of the Interior showing the amount due the	II	2
Clarke, James G	I	1
Clough, Reuben	II	2
Codfisheries, in relation to the repealing all laws allowing bounties to vessels employed in the	I	
Colclaser, Frederick L	I	
Conkright, Emanuel	II	2
Contracts for binding heretofore made by the Secretary of the Senate with Mrs. Adeline Sergeant, and renewed on the 16th and 17th of February, 1860, to inquire and report whether they are authorized by law	I	1
Corbin, Thomas G	I	1
Corporate authorities, the trustees of the public schools, and citizens of Washington, asking congressional aid for the public schools in said city	I	
Correl, Rebecca A	I	
Cradlebaugh, John	I	2
Craven, T. A. M	I	1
Crocker, Harriet	II	2
Custom-house, memorial of the legal representatives of C. G. Treichel and others, late clerks in the Philadelphia, &c	I	1
D.		
Dainese, Francis	I	
Dart, Anson, (H. R. No. 220)	II	2
Davis, J. F., R. F. Blocker, and E. J. Gurley	II	
Davis, Miriam	II	2
Davidson, Captain J. W., United States army	II	2
Dearing, Wm. L. S	I	
De Armas, Christoval, and his son, Miguel De Armas, the heirs, assigns, and legal representatives of, and others	I	1
Dimmick, Horace E	I	1
Disharoon, Thomas L	I	1
District of Columbia, (S. B. No. 50,) to prohibit the issue and circulation of bank notes by corporations and others within the, &c	I	
District upon the Pacific coast, for the inspection of hulls, boilers, and machinery, of vessels propelled in whole or in part by steam, in favor of establishing a separate	I	1
Dole, Barnet W	I	1
Dolet Pierre, for the relief of the heirs and legal representatives of	II	2

Digitized by Google

Subject.	Volume.	Number.
Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States, prayer of Edson Sherwood and twenty-four others, in relation to a certain tract of land in Wisconsin	I	18
Dorr, Hetty G	I	179
Dudley, Thomas P	II	210
E.		
Eastman, Seth	I	151
Eaton, Joseph B., (H. R. No. 371)	II	242
Eckerson, Theodore J	I	56
Edwards, Abraham	I	65
Edwards, Arthur, and others	I	29
Edwards, B. E	I	103
Elisha, Mark, (S. B. No. 42)	I	102
Ely, Jonathan, legal representative of Ed. Ely, deceased	I	201
Ely, Jonathan, legal representative of Ed. Ely, deceased	I	200
Emory, C. S., surviving administrator of Calvin Read, of Florida	II	216
Estudillo de Arguello, Doña Gaudalupe	I	30
Evans, Jane B., executrix, &c	I	194
Everts, Mary, and Canada Brownson	I	14
F.		
Fairfax, William	II	237
Farragut, D. G	I	143
Featherston, Mary	I	82
First Comptroller of the Treasury, in relation to the manner in which the sixth section of the act entitled "An act making appropriations for the Post Office Department during the fiscal year ending the 30th of June, 1859," has been executed by the, &c	II	270
Fisher, George, late of Florida, deceased, &c	II	243
Forsyth, John, the legal representatives of	I	167
Fort Atkinson military reservation and old Indian agency, petition of the settlers on the	I	168
Franklin, Samuel R	I	188
Fridley, A. M., late agent for the Winnebagoes	I	181
Frigate Philadelphia, in relation to various memorials asking payment for the recapture and destruction of the, in the harbor of Tripoli in 1804	I	163
G.		
Gates, Colonel William	I	154
Gaylord, Allen, and other citizens of Ohio	I	66
Georgia, memorial of the State of, for the repayment of certain moneys paid to Peter Trezvant	I	
Glover, Barbara, formerly widow of John Smith	I	1
Gorman, Willis A	I	99
Grant, Leonard	I	34
Gray, Sylvester, a free man of color	II	230
Grelaud, Ruth Ellen, widow of Captain John H. Grelaud	II	225
Greene, Francis M., and Henrietta L	II	227
Gunsally, Nancy	I	33
Gurley, E. J., R. F. Blocker, and J. F. Davis	I	27
Guthrie, Mary K	I	128
H.		
Hogie, Catharine	II	219
Harper's Ferry, report of the select committee in relation to the seizure of the public property at	II	278
Harris, Townsend	I	138
Harris, Arnold, and Samuel F. Butterworth	I	3
Harrison, Robert, Letitia Humphreys, and others	I	93
Hassler, F. E	I	121

Digitized by Google

Subject.	Volume.	Number.
Hawks, Micajah	I	133
Henderson, James, (H. R. No. 79)	II	263
Hensley, Samuel J	I	111
Hildt, Rev. G., and others	II	245
Hobbs, Henry	I	79
Hockaday & Liggit, (H. R. No. 513)	II	259
Hodges & Lansdale	I	120
Hodges, Benjamin, and others	I	125
Home Department, resolution of the Senate to inquire into the expediency of repealing so much of the act entitled An act to establish the, &c.	II	223
Honeywell, Israel, petition of the heirs of	II	240
Hooten, James, (H. R. No. 352)	II	272
House, Hill W., John Scott, and Samuel O. House	I	2
House resolution, No. 352, for the relief of James Hooten	II	272
House resolution, No. 267, for the relief of Mrs. A. W. Angus	II	279
House resolution, No. 79, for the relief of James Henderson	II	263
House resolution, No. 220, for the relief of Anson Dart	II	264
House resolution, No. 233, also memorial of the legal representatives of C. G. Treichel and others	II	192
House resolution, No. 513, for the relief of Hockaday & Liggit	II	259
House resolution, No. 195, &c., in relation to private land claims in the Territory of New Mexico	II	226
House resolution, No 371, for the relief of Joseph B. Eaton	II	242
Houmas grant, relating to the protest of the owners of the; also, in relation to the memorial of residents and owners of lands in the parishes of Ascension and Iberville, Louisiana	I	15(
Howard, H. H	I	4(
Hubbard, G. S., and A. T. Spencer	I	8]
Hudson, William L	II	25(
Hughes, Cornelius	I	5{
Humber, Laura C	I	8{
Humphreys, Letitia, Robert Harrison, and others	I	9{
Hunt, Alice	I	9(
Hüttmann, Francis	I	3{
I.		
Ihrie, George P	I	14{
Indian hostilities (S. No. 11) in Oregon and Washington Territories, and for paying the expenses incurred by the people of said Territories in the suppression of, in 1855 and 1856	I	16{
Izard, Mark W, (S. No. 498)	II	27{
J.		
Jennings, William K., and others	I	12
Johnson, Mathew, and Silas Carleton	II	26{
Johnson, Israel	I	14(
Johnston, John, and Harriet Johnston, widow Marshal, and others	I	10{
Jones, Thomas, and others	I	7(
Jordan, John	I	16
Joseph, Peter	I	5
K.		
Kendall, William T	II	28
Kennedy, Joseph C. G	I	18
Kennedy, Joseph C. G	I	18
Kent, Edward N	I	
Kern, Florain	I	9
Kerwin, Joseph	I	2
Krebs, Stephen, and others	I	13
L.		
Landry, Oliver, heirs, &c., of	II	20

Digitized by Google

Subject.	Volume.	Number.
Land warrants, declaring the meaning of the act entitled An act making further provision for the satisfaction of Virginia	II	261
Leak, Tilman	I	5
Lints, J. J	I	83
Livermore, John S	I	23
Livingston, Henry Brockholst	I	185
Long, Lucy, and others	I	130
Louisiana, in relation to the memorial of residents and owners of lands in the parishes of Ascension and Iberville, in the State of; also, respecting the protest of the owners of the Houmas grant	I	150
Louisiana, (S. B. No. 41,) to affirm certain entries of land in the State of.	II	267
Louisville and Portland canal, in relation to the; also, in reference to the enlargement of and construction of a branch to the	I	126
M.		
McClosky, Charles	I	51
McFarland & Downey	I	104
McGehey, Mary, and others	I	130
McKey, Redick	II	282
McKnight, Sheldon	I	28
McLeod, Catharine Lydia	I	115
McMahon, William, and Thatcher Perkins	I	193
Mackall, John G, the legal representatives of	I	118
Mackall, Richard	II	238
Maddin, Thomas, heirs and legal representatives of	I	17
Maltby, Mary T	I	39
Maltby, Mary J., widow of Lieutenant James West	I	153
Martin, J. E.	I	4
Martin, J. E.	I	137
Martin, Mary, and others	I	125
Mayo, George, the legal representatives of	I	76
Merrill, Abner	I	13
Merrill, Elijah R.	I	45
Menard, Joseph	I	174
Meyer, James	I	175
Miller, John B.	II	234
Mitchell, Anna	II	218
Mitchell, Colonel A. M., (S. B. No. 119)	I	55
Montgomery, Captain John B., United States navy	I	196
Montgomery, Elizabeth	I	92
Moore, Jeremiah	I	11
Morris, William C., and others	II	212
Morse, Isaac E.	I	156
Moseley, William D	I	10
Moylan, Stephen, deceased, heirs of	I	197
Myerle, David	I	31
N.		
Nason, William, and others, legal representatives of John Lord, deceased.	I	84
Nelson, William, a lieutenant in the navy	II	277
Newell, Thomas M	I	142
New Mexico, (H. R. No. 195,) &c., in relation to private land claims in the Territory of	II	228
New Orleans, the city of, and others	I	108
New York, memorial of the Chamber of Commerce of	II	271
Niles, Samuel V	I	105
Nye, J. W., memorial of Rev. G. Hildt and others in favor of the claim of.	II	245
O.		
Officers of the army and marine corps, resolution to inquire into the expediency of paying the, a gross sum per annum in lieu of the commutations, &c., as now allowed by law	II	220
Ogden, Eliza E.	I	87

Digitized by Google

Subject.	Volume.	Number.
Ogden, Mrs. Eliza E.	I	170
Oregon, petition of the legislature of, for pension to H. H. Howard	I	46
Oregon and Washington Territories, (S. B. No. 11,) making appropriations for the payment of the expenses incurred by the people of, in the suppression of Indian hostilities therein in the years 1855 and 1856	I	161
Oregon and Washington Territories, (S. B. No. 149,) respecting appropriations in relation to the geological survey of	I	177
Orr, Robert, and Chambers Orr	II	229
O'Sullivan, Thomas	I	98
P.		
Pacific coast, to create a separate district on the, for the inspection of hulls, boilers, and machinery of steam vessels	I	162
Palmer, Alpheus T.	I	184
Palmer, Aaron H.	I	22
Partridge, Mrs. Ann E. T.	I	54
Pattee, Joseph	I	165
Patterson, T. Harman	II	249
Peale, Franklin	I	61
Pegg, Randall	I	43
Pendergast, Jeremiah	I	36
Perkins, Thatcher, and William McMahon	I	193
Perry, Charles M.	I	77
Perry, Jane, widow of the late Commodore M. C. Perry, United States navy	I	86
Petchaka, William	I	128
Pickell, John	I	10
Porterfield, Charles	I	73
Preston, Mary, (S. B. No. 291)	I	203
Printing, public, respecting alleged abuses in relation to the	II	208
Pritchett, Keziah	I	199
Property holders in Washington city, in relation to the petition of certain, for a law to remunerate them for damage sustained by changing the grades of the streets and avenues in that city	I	15
Public schools in the city of Washington, prayer for congressional aid for same from the corporate authorities and others	I	
R.		
Railroad, from Fond-du-Lac, in Wisconsin, to Lake Superior, respecting joint resolution (S. No. 10,) relating to the route of the	I	15
Railway from the navy-yard to Georgetown, D. C., along Pennsylvania avenue, in relation to a	I	8
Randall, Isaac H.	I	14
Reed, John	II	23
Reeves, Annie D.	I	8
Resolutions of the legislature of California in favor of additional land districts in that State	II	24
Reynes, Joseph, and others	I	10
Reynolds, Raymond	I	4
Rhind, A. C.	II	24
Rice, Henry	II	26
Ricker, Ebenezer	I	4
Ridgely, William G.	I	11
Rittenhouse, John B.	II	24
Robinson, Ann, and others	I	19
Rose, Virginia, and others	II	24
Rudd, Edward, and others	I	19
Rye, Nathaniel	I	9
S.		
Saint Paul, Minnesota, and (S. B. No. 28) in reference to an appropriation for the erection of a suitable building for a custom-house, post office, &c., in the city of	I	4

Digitized by Google

Subject.	Volume.	Number.
Salomon, Haym M	I	127
San Francisco, report of the Attorney General in relation to the ownership by the United States of certain lots, called "fifty vara lots"	I	12
San Francisco, joint resolution of the Senate in relation to the rescue of the officers and soldiers of the army; also, the passengers and the officers and crew of the steamship	II	222
Sample, John	II	251
Sargent, Harrison	I	49
Scott, John, Hill W. House, and Samuel O. Chase	I	2
Scott, Ann	I	6
Secretary of the Interior, report of the, showing the amount due the Choctaw tribe of Indians, &c	II	283
Select committee of the Senate to inquire into the late invasion and seizure of the public property at Harper's Ferry, report of the	II	278
Senate bill, No. 28, in relation to an appropriation for the erection of a custom-house, post office, &c., at St. Paul, Minnesota	I	44
Senate bill, No. 61, in relation to the reorganization of the several departments and corps of the army, &c	I	21
Senate bill, No. 119, for the relief of A. M. Mitchell, late a colonel of Ohio volunteers in the war with Mexico	I	55
Senate bill, No. 42, for the relief of the heirs of Mark Elisha	I	102
Senate bill, No. 11, making an appropriation for the payment of the expenses incurred by the people of the Territories of Oregon and Washington, in the suppression of Indian hostilities therein, in the years 1855 and 1856	I	161
Senate bill, No. 41, to affirm certain entries of land in the State of Louisiana	II	267
Senate bill, No. 498, in relation to allowances to Mark W. Izard	II	274
Senate bill, No. 386, authorizing notaries public to take and certify oaths, affirmations, and acknowledgments, in certain cases	II	281
Senate bill, No. 419, recognizing the survey of the Grand Cheniere island	II	256
Senate bill, No. 43, for the relief of Solomon Wadsworth	II	207
Senate bill, No. 291, for the relief of Mary Preston	II	203
Senate bill, No. 149, in relation to the geological survey of Oregon and Washington Territories	I	177
Senate resolution in relation to the repeal of a portion of the act entitled "An act to establish the Home Department and to provide for the Treasury Department an assistant secretary of the treasury and a commissioner of customs," &c., approved March 3, 1849	II	223
Senate resolution to inquire into the expediency of paying the officers of the army and the marine corps a gross sum per annum, in lieu of the commutations, &c., now allowed by law	II	220
Sener, Adam	I	129
Sergeant, Mrs. Adeline, as to whether the contracts heretofore made by the Secretary of the Senate with her, and renewed on the 16th and 17th of February, 1860, for binding the reserved numbers of Senate documents, are authorized by law	I	113
Settlers on "the Fort Atkinson Military reservation," &c	I	168
Shepherd, Catharine	II	211
Sherwood, Edson, and twenty-four others, and also the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States	I	18
Shubrick, William B., United States navy	I	147
Sibley, Solomon, Ross Wilkins, and James Witherell	I	19
Sickels, Frederick E	I	166
Simons, Maurice K	II	235
Simpson, Lockley	I	187
Sioux Indians, in relation to the treaties made between the United States and the, June 19, 1858; also, preamble and resolution growing out of the same	II	284
Slaughter, Emily L	I	52
Smith, J. Hosford	I	159
Smith, James	I	35
Sour John, (a Cherokee)	I	132
Spencer, A. T., and G. S. Hubbard	I	81

Digitized by Google

Subject.	Volume.	Number.
Squier, E. George	I	190
Steamship San Francisco, joint resolution of the Senate in relation to the rescue of the officers and soldiers of the army, the passengers, and the officers and crew of the	II	222
Steele, Augustus	II	260
Stott, Hester	I	180
Stout, Nancy	I	176
Stratton, Hermon D	II	239
Sweeny, Rittenhouse, Fant & Co	I	107
Sweet, Charles J	I	152
Sweetser, M	I	90
T.		
Taliaferro, Richard	II	257
Taylor, Kate D	I	112
Thompson, A. B., and sundry other American citizens in California	I	198
Tippett, Edward D	I	64
Towson, Mary	II	231
Treichel, C. G., and others; also, (H. B. No. 233)	I	192
Tripoli, relating to various memorials asking payment for the recapture and destruction of the frigate Philadelphia, in the harbor of, in 1804	I	163
U.		
Underhill, Nicholas	I	57
V.		
Van Buskirk, Peter	I	140
Van Camp & Chapin	I	148
Vance, William, & Brothers	I	158
Van De Venter, Mrs. Eliza J	I	26
Varn, Isaac	I	141
Verbiski, Joseph	I	47
Vesey, William H	II	241
Vincent, Frederick, administrator of James Le Caze	I	139
Virginia land warrants, to declare the meaning of the act entitled An act making further provision for the satisfaction of	II	261
W.		
Wadsworth, Solomon, (S. B. No. 43)	II	207
Wallace, William	I	32
Walter, James, and Theodore	I	119
Ward, Benjamin	I	63
Washington city, public schools in, prayer for congressional aid in behalf of, from the corporate authorities and others	I	8
Washington city, certain property holders in, asking for remuneration for damage sustained by changing the grades of streets and avenues of that city	I	155
Webster, Frances M	II	254
Weeks, Nathan, the heirs of	II	213
Wehrheim, Valentine	I	89
West, C. L., and others	II	215
West, Lieutenant James, petition of Mary J. Maltby, as widow of	I	153
West, William R	I	50
Weston, George M	I	62
Wetonsaw, son of James Connor	I	116
Wheeler, John H	I	134
White, Ashton S. H	II	209
Whiting, Louisa T	II	226
Whitney, Daniel	I	173
Wickizer, John H	I	74
Wilcomb, Joseph	I	67
Wiley, Hugh	I	68

Digitized by Google

Subject.	Volume.	Number.
Wilkey, Catharine, heir of Joseph Paine	I	178
Wilkins, Ross, James Wetherell, and Solomon Sibley	I	19
Wisconsin (S. R. No. 10,) relating to the route of the railroad from Fond-du-Lac, in the State of, to Lake Superior	I	157
Wise, Henry A., and others	I	125
Witham, Deborah Stevens	II	232
Witherell, James, Ross Wilkins, and Solomon Sibley	I	19
Wood, William Maxwell	II	269
Worster, Lemuel	I	114
Worster, Lemuel	I	186
Y.		
Yulee, Elias	I	123

REPORTS OF COMMITTEES.

Subject.	Volume.	Number.
Reports from the Committee on Foreign Relations.		
Senate bill No. 464, for the relief of Francis Dainese	I	1
Memorial of J. E. Martin	I	4
Petitions of William K. Jennings and Alphia Jennings, Henry A. Wise, Ann Robinson, Edward Rudd, Mary Martin, and Benjamin Hodges, (S. B. No. 259)	I	125
Memorial of John H. Wheeler, (S. B. No. 270)	I	134
Resolution of the Senate of the 19th December, 1856, with the accompanying papers, relative to the claim of John P. Brown, principal interpreter of the Turkish language to the United States legation at Constantinople, &c., (S. B. No. 271)	I	135
Memorial of Charles E. Anderson, late secretary of legation of the United States at Paris, (S. B. No. 272)	I	136
Memorial of J. E. Martin, acting consul of the United States, (S. B. No. 273)	I	137
Memorial of Townsend Harris, consul general of the United States in Japan, (S. B. No. 274)	I	138
Memorial of Isaac E. Morse, (S. B. No. 317)	I	156
Petition of J. Hosford Smith, late consul of the United States at Beirut, Syria, (S. B. No. 319)	I	159
Claim of the legal representatives of John Forsyth, deceased, (S. B. No. 368)	I	167
Petition of E. George Squier, (S. B. No. 400)	I	190
Petition of James G. Clarke, (S. B. 401)	I	191
Memorial of Jonathan Ely, legal representative of Edward Ely, deceased, (S. B. No. 411)	I	201
Petition of William H. Vesey, United States consul at Havre, (S. B. No. 463)	II	241
Memorial of William T. Kendall, of Baltimore	I	280
Reports from the Committee on Finance.		
Petition of Edward N. Kent, (S. B. No. 74)	I	7
Petition of Henry Rice, (S. B. No. 501)	II	268
Reports from the Committee on Commerce.		
Petition of Jeremiah Moors, (S. B. No. 80)	I	11
Petition of Leonard Grant	I	34
Petition of Francis Hüttmann, (S. B. No. 143)	I	37

Digitized by Google

Subject.	Volume.	Number
Reports from the Committee on Commerce—Continued.		
Bill repealing all laws or parts of laws allowing bounties to vessels employed in the bank or other codfisheries, (S. B. No. 16)	I	4
Petition of F. E. Hassler	I	12
Bill in relation to the Louisville and Portland canal, also joint resolution in relation thereto, (S. R. No. 6)	I	12
Bill to create a separate district upon the Pacific coast for the inspection of hulls and boilers, and machinery of vessels propelled by steam, (S. B. No. 288)	I	16
Reports from the Committee on Military Affairs..		
Senate bill, No. 61, proposing a reorganization of the several departments and corps of the army to promote its efficiency, &c	I	9
Petition of R. F. Blocker, E. J. Gurley, and J. F. Davis, (S. B. No. 114).	I	9
Senate bill, No. 119, for the relief of A. M. Mitchell	I	9
Petition of Theodore J. Eckerson	I	9
Petition of Florian Kern	I	9
Memorial of Horace E. Dimmick	I	10
Petition of George P. Ihrie	I	10
Memorial of William Vance & Brothers, (S. B. No. 290)	I	10
Senate bill, No. 11, making appropriation for the payment of the expenses incurred by the people of Oregon and Washington Territories in the suppression of Indian hostilities therein, in 1855 and 1856	I	10
Memorial of Major Benjamin Alvord, (S. B. No. 376)	I	10
Resolution to inquire into the expediency of paying the officers of the army and of the marine corps a gross sum per annum, in lieu of the commutations, &c., as now allowed by law	II	2
Memorial of Dr. C. F. Alexander	II	2
Joint resolution (S. No. 25) expressing the sense of Congress towards the officers and seamen of the vessels and others engaged in the rescue of the officers and soldiers of the army, the passengers, and the officers and crew of the steamship San Francisco from perishing with the wreck of that vessel	II	2
Resolution of the Senate, inquiring into the expediency of repealing so much of the act entitled "An act to establish the Home Department," &c., approved March 3, 1849, as transfers the supervisory and appellate powers in relation to the acts and duties of the Commissioner of Indian Affairs from the War to the Interior Department, (S. B. 436)	II	2
House resolution, No. 371, for the relief of Joseph B. Eaton	II	2
Petition of J. W. Davidson	II	2
Senate bill, No. 498, granting allowance of money to Mark W. Izard	II	2
Reports from the Committee on Naval Affairs.		
Memorial of Ann Scott, (S. B. No. 60)	I	
Memorial of William D. Moseley, (S. B. 89)	I	
Memorial of Otway H. Berryman, (S. B. No. 145)	I	
Petition of John C. Carter, (S. R. No. 15)	I	
Petition of T. A. M. Craven, (S. B. No. 244)	I	
Petition of D. G. Farragut, (S. B. No. 281)	I	
Petition of Eliphalet Brown, jr., (S. B. No. 286)	I	
Petition of William B. Shubrick, United States navy, (S. B. No. 295)	I	
Memorial of Isaac H. Randall, (S. B. No. 300)	I	
Petition of Charles J. Sweet, (S. B. No. 309)	I	
Petition of Samuel R. Franklin, (S. B. No. 398)	I	
Petition of Thomas G. Corbin, (S. B. No. 399)	I	
Petition of Ann W. Angus, (H. R. bill No. 267)	I	
Senate bill, No. 251, for the relief of John B. Rittenhouse	II	
Petition of A. C. Rhind	II	
Petition of T. Harman Patterson	II	
Petition of William L. Hudson	II	
Petition of John Sample	II	
Memorial of H. S. Baldwin, (S. R. No. 36)	II	
Petition of W. Brenton Boggs	II	

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Subject.	Volume.	Number.
Reports from the Committee on Naval Affairs—Continued.		
Memorial of William Maxwell Wood	II	269
Petition of William Nelson, (S. B. No. 508)	II	277
House Resolution, No. 267, for the relief of Mrs. A. W. Angus	II	279
Reports from the Committee on Public Lands.		
Petition of Benjamin Ward, of Maine	I	63
Petition of Edward D. Tippett	I	64
Petition of Abraham Edwards, late register of the land office at Kalamazoo, Michigan	I	65
Petition of Allen Gaylord and other citizens of the State of Ohio	I	66
Petition of Thomas Jones and others, of Clermont county, Ohio	I	70
Petition of Henry Hobbs, of Maine, (S. B. No. 199)	I	79
Petition of Elias Yulee	I	123
Senate resolution, No. 10, relating to the route of the railroad from Fond-du-Lac to Lake Superior	I	157
Petition of the settlers on the "Fort Atkinson military reservation and old Indian agency," (S. B. No. 371)	I	168
Senate bill, No. 149, in relation to appropriations for the completion of the geological survey of Oregon and Washington Territories	I	177
Senate bill, No. 43, for the relief of Solomon Wadsworth	II	207
Petition of Ashton S. H. White, (S. B. No. 429)	II	209
Petition of Robert Orr and Chambers Orr	II	229
Case of Sylvester Gray, a free man of color, (S. B. No. 452)	II	230
Case of Mary Towson, (S. B. No. 453)	II	231
Petition of Deborah Stevens Witham, (S. B. No. 454)	II	232
Resolutions of the legislature of California in favor of the creation of additional land districts in that State	II	244
Bill to declare the meaning of the act entitled "An act making further provision for the satisfaction of Virginia land warrants," passed August 31, 1852, (S. B. No. 347)	II	261
"Joint resolution of the legislature of California asking Congress to cede and donate a tract of land known as the 'Colorado desert' to that State, for certain purposes therein set forth," (S. R. No. 44)	II	276
Reports from the Committee on Private Land Claims.		
Report of the Attorney General of the United States, (Ex. Doc. No. 30,) of 17th February, 1859, (S. B. No. 97)	I	12
Petition of the heirs, &c., of Thomas Maddin, (S. B. No. 49)	I	17
Memorial of the Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States, and also the petition of Edson Sherwood and twenty-four others, (S. B. No. 106)	I	18
Senate bill, No. 42, for the relief of the heirs, &c., of Mark Elisha	I	102
Claim of B. E. Edwards to certain land in New Mexico, (S. B. No. 240)	I	103
Petitions of the city of New Orleans, of Joseph Reynes, of John and Harriet Johnston, and Widow Marshal, sole heirs of James Johnston, deceased, of the heirs, &c., of Christoval de Armas and his son, Miguel de Armas, (S. B. No. 246)	I	108
Petition of William Petchaka	I	122
Petition of Thomas L. Disharoon, (S. B. No. 256)	I	124
Petition of the mayor and council of the city of Baton Rouge, (S. B. No. 378)	I	172
Petition of Daniel Whitney, (S. B. No. 379)	I	173
Petition of Joseph Ménard, (S. B. No. 380)	I	174
Act for the relief of the heirs, &c., of Pierre Dolet, of Louisiana, (S. B. No. 425)	II	206
Senate bill, No. 382, for the relief of the heirs, &c., of Oliver Landry, of Louisiana	II	208
House bill, No. 195, and various reports of the surveyor general of the Territory of New Mexico in relation to private land claims in said Territory	II	228
Senate bill, No. 419, recognizing the survey of the Grand Cheniere island	II	256
Senate bill, No. 41, to affirm certain entries of land in the State of Louisiana	II	267

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Subject.	Volume.	Number.
Reports from the Committee on Indian Affairs.		
Petition of Tilman Leak, (S. B. No. 55)	I	5
Memorial of M. Sweetser, (S. B. No. 150)	I	90
Claim of Willis A. Gorman, (S. B. No. 235)	I	99
Memorial of Samuel J. Hensley	I	111
Memorial of Wetonsaw, son of James Connor, (S. B. No. 253)	I	116
Petition of Stephen Krebs, Mary McGehey, and Lucy Long, children of Stephen Krebs, a citizen of the Choctaw nation	I	130
Papers in the case of Sour John, a Cherokee	I	132
Petition of Israel Johnson, of Indiana, (S. B. No. 293)	I	146
Memorial of Seth Eastman, (S. B. No. 308)	I	151
Claim of A. Fridley, late agent, &c., (S. R. No. 28)	I	181
House bill, No. 220, for the relief of Anson Dart	II	264
Memorial of Redick McKey, (S. B. No. 514)	II	282
Report of the Secretary of the Interior, and the account stated under his direction, showing the amount due the Choctaw tribe of Indians, &c., (S. B. No. 515)	II	283
Preamble and resolution in reference to the treaties of June 19, 1858, with certain bands of the Dacotah or Sioux Indians; also, report in relation to same	II	284
Reports from the Committee on Claims.		
Memorial of Aaron Haight Palmer, (S. B. No. 111)	I	22
Memorial of Doña Gaudalupe Estudillo de Arguello, (S. B. No. 117)	I	30
Case of David Myerle, (S. B. No. 118)	I	31
Petition of Elijah R. Merrill, (S. B. No. 169)	I	45
Petition of Mrs. Ann E. T. Partridge	I	54
Memorial of Franklin Peale, (S. B. No. 189)	I	61
Petition of George M. Weston, (S. B. No. 191)	I	62
Memorial of John H. Wickizer	I	74
Petition of William L. S. Dearing	I	75
Petition of the legal representatives of George Mayo, deceased	I	76
Memorial of Charles M. Perry	I	77
Memorial of J. J. Lints, (S. B. No. 223)	I	83
Petition of Eliza E. Ogden	I	87
Cases of Letitia Humphreys and Robert Harrison, (S. B. No. 230)	I	93
Petition of Samuel V. Niles, (S. B. No. 94)	I	105
Petition of William G. Ridgely	I	117
Petition of the legal representatives of John G. Mackall	I	118
Petition of Hodges & Lansdale	I	120
Memorial of Isaac Varn, (S. B. No. 278)	I	141
Memorial of Thomas M. Newell, (S. B. No. 280)	I	142
Memorial of Van Camp & Chapin, (S. B. No. 297)	I	148
Memorial of Colonel William Gates, (S. B. No. 311)	I	154
Memorials asking payment for the recapture and destruction of the frigate Philadelphia in the harbor of Tripoli, in the year 1804, (S. B. No. 341)	I	163
Memorial of William P. Bowhay, (S. B. No. 373)	I	169
Claim of Mrs. Eliza E. Ogden, (S. B. No. 374)	I	170
Petition of James Meyer, (S. B. No. 383)	I	175
Memorial of Joseph C. G. Kennedy, (S. B. No. 392)	I	182
Petition and papers of Joseph C. G. Kennedy, (S. B. No. 393)	I	183
Memorial of the legal representatives of C. G. Treichel and others, (H. R. No. 233)	I	192
Memorial of Captain John B. Montgomery, United States navy, (S. B. No. 406)	I	196
Petition of A. B. Thompson and other American citizens in California	I	198
Memorial of Jonathan Ely, (S. B. No. 415)	I	200
Memorial of C. L. West and others, (S. B. No. 431)	II	215
Memorial and papers in the case of C. S. Emory, (S. B. No. 432)	II	216
Petition of Richard Mackall	II	238
Senate joint resolution No. 8, which passed the Senate March 23, 1860, relating to the claim of George Fisher, late of Florida, deceased, together with an amendment of the House of Representatives relating to the same subject	II	243

Digitized by Google

Subject.	Volume.	Number.
***Reports from the Committee on Claims*—Continued.**		
Memorial of Rev. G. Hildt and others, (S. B. No. 474)	II	245
Memorial of Augustus Steele, (S. B. No. 493)	II	260
House bill No. 79, for the relief of James Henderson	II	263
Reports from the Committee on Revolutionary Claims.		
Memorial of the legal representatives of John Bell, (S. B. No. 195)	I	72
Petition of the legal representatives of Charles Porterfield, (S. B. No. 196)	I	73
Petition of William Nason and others, legal representatives of John Lord, deceased, (S. B. No. 224)	I	84
Senate bill No. 95, for the relief of Elizabeth Montgomery	I	92
Memorial of the State of Georgia for the repayment of certain moneys paid to Peter Trezvant	I	94
Petition of Barnet W. Dole	I	109
Petition of Catharine Lydia McLeod	I	115
Memorial of Haym M. Salomon, (S. B. No. 263)	I	127
Papers in the case of Jacob Bigelow	I	131
Petition of Frederick Vincent, (S. B. No. 275)	I	139
Memorial of Catharine Wilkie	I	178
Memorial of Hetty G. Dorr	I	179
Petition of the heirs of Henry Brockholst Livingston	I	185
Memorial of the heirs of Stephen Moylan	I	197
Petition of William C. Morris	II	212
Petition of the heirs of Nathan Weeks	II	213
Petition of the heirs of Israel Honeywell	II	240
Petition of Virginia Rose, (S. B. No. 476)	II	246
Petition of Ford Barnes	II	252
Petition of the representatives of Richard Taliaferro	II	257
Reports from the Committee on the Judiciary.		
Bill to authorize and direct the settlement of the accounts of Ross Wilkins, James Witherell, and Solomon Sibley, (S. B. No. 66)	I	19
Petition of George C. Barnard, assignee of the Hon. David C. Broderick	I	101
Petition of McFarland & Downey, (S. B. No. 241)	I	104
Memorial of Sweeny, Rittenhouse, Fant & Co., (S. B. No. 245)	I	107
Resolution of the Senate to inquire and report whether the contracts made by the Secretary of the Senate with Mrs. Adeline Sergeant, &c., for binding, are authorized by law	I	113
Petition of John Cradlebaugh, (S. B. No. 417)	I	202
Memorial of Jeffrey T. Adams	I	204
Return of Mathew Johnson and of Silas Carleton, with the accompanying papers, (S. B. No. 496)	II	262
Memorial of the Chamber of Commerce, New York	II	271
Senate bill No. 386, explanatory of an act to authorize notaries public to take and certify oaths, &c., in certain cases	II	281
Reports from the Committee on Post Offices and Post Roads.		
Memorial of John Scott, Hill W. House, and Samuel O. House, (S. B. No. 22)	I	2
Memorial of Arnold Harris and Samuel Butterworth, (S. B. No. 23)	I	3
Petition of Sheldon McKnight, (S. B. No. 30)	I	28
Report of the Court of Claims adverse to the claim of Arthur Edwards and others, (S. B. No. 29)	I	29
Senate bill, No. 28, for making an appropriation for the erection of a suitable building for a custom-house, post office, court rooms, &c., at St. Paul, Minnesota, (S. B. No. 28)	I	44
Petition of A. T. Spencer and G. S. Hubbard, of Chicago, Illinois, (S. B. No. 221)	I	81
House bill, No. 513, for the relief of Hockaday & Liggit	II	259
House bill, No. 352, for the relief of James Hooten	II	272
Memorial of C. W. Cartwright and others	II	273
Memorial of the California Stage Company, (S. B. No. 507)	II	275

Digitized by Google

Subject.	Volume.	Number.
Reports from the Committee on Pensions.		
Petition and papers relating to the claim of Abner Merrill, (S. B. No. 96)	I	13
Petition of Mary Everts	I	14
Petition of William Allen	I	15
Petition of John Pickell	I	16
Petition of Mrs. A. L. Childs, (S. B. No. 108)	I	20
Petition of John S. Livermore	I	23
Memorial of Nathaniel Rye	I	24
Petition of Joseph Kerwin	I	25
Petition of Eliza J. Van de Venter	I	26
Petition of William Wallace, (S. B. No. 120)	I	32
Petition of Nancy M. Gunsally, (S. B. No. 124)	I	33
Petition of James Smith, (S. B. No. 134)	I	35
Petition of Ann Allen	I	36
Petition of Jeremiah Pendergast, (S. B. No. 144)	I	38
Petition of Mary T. Maltby	I	39
Petition of Ebenezer Ricker, (S. B. No. 151)	I	42
Petition of the legislature of Oregon, that a pension may be granted to H. H. Howard, (S. B. No. 170)	I	46
Petition of Joseph Verbiski, (S. B. No. 83)	I	47
Petition of Raymond Reynolds	I	48
Petition of Harrison Sargent	I	49
Petition of William W. West, *alias* Mooney	I	50
Petition of Charles McClosky	I	51
Petition of Emily L. Slaughter	I	52
Petition of Peter Joseph	I	53
Petition of Nicholas Underhill, (S. B. No. 182)	I	57
Memorial of Cornelius Hughes, (S. B. No. 183)	I	58
Petition of Rebecca A. Correll, (S. B. No. 184)	I	59
Bill for the relief of Olivia W. Cannon, (S. B. No. 98)	I	60
Petition of Joseph Wilcomb	I	67
Petition of Hugh Wiley	I	68
Petition of Daniel Abbott	I	69
Petition of Elias Carpenter	I	71
Petition of Mary Featherston, (S. B. No. 222)	I	82
Petition of Annie D. Reeves, (S. B. No. 225)	I	85
Papers of Jane Perry	I	86
Petition of Laura C. Humber, (S. B. No. 227)	I	88
Petition of Valentine Wehrheim, (S. B. No. 228)	I	89
Petition of Angelina C. Bowman, (S. B. No. 229)	I	91
Petition of Frederick L. Colclaser, (S. B. No. 232)	I	95
Petition of Alice Hunt, (S. B. No. 233)	I	96
Petition of Thomas O. Sullivan	I	98
Memorial of Mary Elizabeth Castor, (S. B. No. 247)	I	110
Petition of Kate D. Taylor, (S. B. No. 250)	I	112
Petition of Lemuel Worster	I	114
Petition of Mary K. Guthrie, (S. B. No. 268)	I	128
Papers in favor of a pension to Adam Sener	I	129
Petition of Micajah Hawks, (S. B. No. 269)	I	133
Petition of Peter Van Buskirk, (S. B. No. 277)	I	140
Petition of Mary J. Maltby, (S. B. No. 310)	I	153
Petition of Barbara Glover	I	160
Petition of John Jordan	I	164
Petition of Joseph Pattee, (S. B. No. 346)	I	165
Petition of Nancy Stout	I	176
Petition of Hester Stoll, (S. B. No. 390)	I	180
Petition of Alpheus T. Palmer	I	184
Petition of Lemuel Worster, (S. B. No. 395)	I	186
Petition of Lockley Simpson, (S. B. No. 396)	I	187
Petition of Keziah Pritchett, (S. B. No. 414)	I	199
Petition and Senate bill No. 291, for the relief of Mary Preston	I	203
Petition of Thomas P. Dudley	II	210
Petition of Catharine Shepherd	II	211
Petition of Reuben Clough, (S. B. No. 430)	II	214
Petition of Jane W. Brent	II	217

Digitized by Google

Subject.	Volume.	Number.
Report from the Committee on Pensions—Continued.		
Petition of Anna Mitchell	II	218
Petition of Catharine Hagie	II	219
Petition of Mria M. Alexander, (S. B. No. 439)	II	224
Petition of Ruth Ellen Grelaud, (S. B. No. 440)	II	225
Petition of Louisa T. Whiting, (S. B. No. 446)	II	226
Petition of Francis M. and Henrietta L. Greene	II	227
Memorial of Emanuel Conkright, (S. B. No. 455)	II	233
Petition of John B. Miller, (S. B. No. 456)	II	234
Petition of Maurice K. Simons	II	235
Memorial of John Reed	II	236
Petition of William Fairfax	II	237
Petition of Hermon D. Stratton, (S. B. No. 462)	II	239
Petition of Frances M. Webster, (S. B. 481)	II	254
Petition of Harriet Crocker, (S. B. No. 485)	II	255
Petition of Miriam Davis, (S. B. No. 499)	II	265
Reports from the Committee on the District of Columbia.		
Memorials and petitions from the corporate authorities, the trustees of the public schools, and citizens of Washington, praying congressional aid for the public schools in said city, (S. B. No. 76)	I	8
Senate bill, No. 50, to prohibit the issue of bank notes by corporations within the District of Columbia, &c	I	9
Petitions and memorials in relation to a railway on Pennsylvania avenue from the Navy-yard to Georgetown, (S B. No. 201)	I	80
Petition of James and Theodore Walter, asking the conveyance to them of certain lots in Washington city	I	119
Petition of certain property holders in the city of Washington, praying the passage of a law to remunerate owners of property for damage by changing the grades of streets and avenues of that city, (S. B. No. 313)	I	155
Reports from the Committee on Patents and the Patent Office.		
Memorial of Randall Pegg, (S. B. No. 154)	I	43
Memorial of Frederick E. Sickels, (S. B. No. 367)	I	166
Memorial and petition of Thatcher Perkins and William McMahon, (S. B. No. 403)	I	193
Memorial and petition of Jane B. Evans, (S. B. No. 404)	I	194
Reports from the Select Committees.		
Memorial of residents and owners of lands in the parishes of Ascension and Iberville, Louisiana, praying the repeal of the "Act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes," (S. B. No. 307)	I	150
Resolution of inquiry as to whether certain sums of money were paid by the Public Printer, or any party who executed the binding for the last Congress or the executive departments, for the use and benefit of any person or party conducting a newspaper, &c.; testimony in relation thereto	II	205
Resolution in favor of instituting an inquiry as to whether the sixth section of the act entitled "An act making appropriations for the Post Office Department during the fiscal year ending 30th of June, 1859," has been executed by the First Comptroller of the Treasury, &c	II	270
Resolution of inquiry into the late invasion and seizure of the public property at Harper's Ferry, &c	II	278

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1859.

On motion by Mr. Crittenden,

Ordered, That the report from the Committee on Foreign Relations, on the claim of Francis Dainese, made at the last session of Congress, be printed and referred to the Committee on Foreign Relations, with bill S. 14.

IN THE SENATE OF THE UNITED STATES, *March* 3, 1859.

Mr. CRITTENDEN made the following

REPORT.

[To accompany bill S. 464.]

The Committee on Foreign Relations, to whom was referred the bill for the relief of Francis Dainese, have had the same under consideration, and report to the Senate that they recommend the passage of said bill.

For a statement of the case they refer to the accompanying reports made from the Committee on Foreign Affairs of the House of Representatives on the 8th of August, 1856, and on the 5th of March, 1858, respectively.

IN THE HOUSE OF REPRESENTATIVES, *March* 5, 1858.

Mr. BURLINGAME, from the Committee on Foreign Affairs, made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of Francis Dainese, late consul at Constantinople, praying compensation and indemnity for services, expenses, and losses, make the following report:

The memorialist held the office of vice-consul, acting consul, and consul, from May 16, 1849, to December 20, 1852, a period of three years, seven months, and four days, as appears by the records of the State Department, (copies of which have been furnished to the com-

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mittee;) and he claims to be allowed compensation for contingent, travelling, and other expenses and losses as such vice-consul, acting consul, and consul during that period. A part of the amount claimed is for compensation, at the rate of one thousand dollars per annum, amounting to three thousand five hundred and ninety-five dollars and forty cents for judicial services, under the act of August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries." This part of the claim is regarded by the committee as not allowable, because the act of 1848, under which it is claimed, is considered, in their opinion, as not entitling the diplomatic and consular agents of the United States in Turkey to the same compensation therein made for like officers in China; and, in this particular, the committee concur with the views of that of the 34th Congress upon this matter.

Another part of the claim of the memorialist is for the sum of six hundred and thirty-five dollars, on account of the contingent expenses of his consulate, for the support whereof an annual appropriation of five hundred dollars is made. Upon a careful examination of this item, and after fully investigating his accounts by transcripts from, and inquiries at, the Treasury Department, the committee are satisfied there is justly due, on this account, the sum of four hundred and thirty-one dollars and forty-nine cents, which should be allowed; this sum having been inadvertently and erroneously paid to his predecessor, George A. Porter. The difference between the amount claimed, and that reported to be due, arises from two facts: First, that the memorialist has claimed the allowance for contingent expenses from April 1, 1849, the beginning of the quarter, instead of from May 16th of that year, the commencement of the period of his service; and, second, that there appears to have been paid on his draft in favor of Mr. Porter the sum of one hundred and forty dollars on this account. The memorialist avers that Mr. Porter has never accounted for or paid over this money to him; but the government, with his draft in its hands as a voucher, is clearly not responsible for the alleged delinquencies of Mr. Porter.

Another part of the claim of the memorialist is for interest and loss on exchange on his drafts, for money allowed to him as an indemnification for his support of those refugees having American passports at Constantinople, from 1849 to 1851, both inclusive. The committee, after a careful examination of the documents communicated to the last Congress by messages of February 23 and March 3, 1857, as well as those now submitted by the memorialist, and circumstances therewith connected, and after taking under due consideration the statements made by his opponents, and the facts set forth, and proofs submitted by the memorialist in refutation thereof, in his communications of 12th September, 1856, and 28th February, 1857, are satisfied that, to do the memorialist justice, there should be allowed to him, in connexion with this claim, the additional sum of $609 11. The committee, however, aware of the objection existing in the minds of many to the payment of interest and losses in the case of any

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claim on the government, have not thought it advisable to embarrass this case by including in the bill accompanying this report any amount for those items; and, therefore, advise the memorialist to accept in lieu thereof the allowance proposed in full, as stated in this bill.

It appears to the satisfaction of the committee, from an examination of the numerous public documents above referred to, that on the 29th of July, 1851, whilst the memorialist was the duly recognized incumbent of the consulate at Constantinople, and was discharging the duties thereof, the persons then having charge there of the affairs of the legation of the United States forcibly, and *without proper authority*, ejected him from and violated his consular office, and took thence the public archives and effects, and, as he alleges, also his own private papers therein; and that *he was thereby*, and by their persistent interference with his official duties, *unwarrantably driven from his office*, and, for want of competent authority abroad to redress his wrong and protect the public rights and interests intrusted to him, was compelled to appeal and resort at once to the Executive of the United States, which he did by repairing to the seat of government, leaving his agent in charge of the consulate during his absence, with compensation at the rate of $500 per annum, which he paid out of his own funds, and for which he has not been reimbursed; that after a full and protracted examination of the facts of his case, his course was unqualifiedly approved by the then Executive, Mr. Webster being then Secretary of State. (Mr. Webster's decision is fully sustained in a recent letter from the Secretary of State, dated February 27, 1857, to one of the parties implicated, in which the Secretary further *declines complying with their request to recognize the legality of their occupancy of the consulate during the period of the forcible ejection therefrom by them of the memorialist.*) Moreover, by reference to the opinion of Attorney General Cushing, (September 19, 1855, vol. vii, page 512,) the memorialist was, at the time he was forcibly ejected, deemed a person invested by the United States with, and exercising, consular authority, *subject* to the instructions *alone* of the Secretary of State; and, therefore, the officers of the legation evidently had no right to interfere with or to resist him, and having done so, their act was illegal and in direct violation of law. And this view is fully sustained by the opinion of Attorney General Legare, (March 24, 1843, vol. iv, page 165;) by Judge Story's opinion, (United States *vs.* Bachelder, ii Gallison, page 15,) and by prominent publicists, such as "De Clerq," "Warden," "Borel," "Miltitz," "Kluber," "Moreuil," "de Martens," &c. That he was thereupon promoted to the full consulship, and, with this higher dignity, directed to repair again to Constantinople, bearing with him an order of the government for the commodore in command of the United States squadron in the Mediterranean to convey him to Constantinople in a national vessel, with all the accustomed honors. The following is a copy of the letter addressed by the Secretary of the Navy to Commodore Stringham, then in command of the squadron, to which the committee refer:

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"NAVY DEPARTMENT, *April* 13, 1852.

"SIR: I have been informed by the honorable Secretary of State that the President, by and with the advice of the Senate, has appointed Francis Dainese, esq., consul of the United States at Constantinople, and that it is deemed important, for the sake of cultivating the kindly relations that now so happily subsist between the government of the United States and the Sublime Porte, and to inspire a becoming respect for the office of consul in a city where its duties are daily becoming more important, *as well as for other considerations*, that a vessel of war should convey him to his destination, from Spezzia or some other convenient port in the Mediterranean. You will, therefore, direct the commander of one of the vessels in the Mediterranean squadron to hold his ship in readiness to receive on board, at Spezzia, Naples, or such other port in the Mediterranean as may be indicated by Mr. Dainese, and convey him to Constantinople, taking care that the necessary permission be first obtained to pass the Dardanelles.

"You may instruct the commander you may select for this service to pay the accustomed ceremonies and salutes to our consul on his reception on board and departure from his ship, and to omit no demonstration of civility to the authorities of the Sublime Porte.

"I am, sir, very respectfully, your obedient servant,

"WILL. A. GRAHAM.

"Com. S. H. STRINGHAM,
"*Appointed to command the United States squadron*
"*in the Mediterranean, Boston, Mass.*"

Through a misapprehension this order was not complied with, and the memorialist remained at Syra, in Greece, to which point he went under the directions of Commodore Stringham, awaiting a vessel and the further orders of the government till December 20, 1852, when, by a change in the administration of the State Department (on the death of Mr. Webster) he received the notice of his recall, and immediately thereupon returned to the United States.

During all this period his agent, employed at his expense to discharge the duties of the consulate, recognized as such by the State Department, was prevented by the same unwarrantable interference of the officers in the United States legation from performing the functions, and, in consequence, from receiving the fees and emoluments of the office, which at that time were allowed as the only compensation of the officer discharging the duties of the consulate. The expense incurred by the payment of the compensation to his agent for the period in question—being one year four months and twenty-three days—amounted to the sum of $697 90, for which he has received no indemnity by way of fees or otherwise. The expenses of his journeys, made necessary by the circumstances to which the committee have referred, could not have been less than $900 over and above all other expenses for his support and maintenance during the period mentioned, away from his home and official post. There is no defined rate whereby to graduate the allowance that ought to be made to the memorialist for all these expenses, but the committee think it will be

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just and reasonable to allow him therefor at the rate of the compensation now fixed by law for the consul at Constantinople, together with the sum of $900 for his travelling expenses, including in this all claim for the compensation paid by him to his agent in the consulate.

The committee, therefore, report and recommend the passage of the accompanying bill, which is designed, as its terms import, to be in full of all claims and demands of the memorialist for his travelling, contingent, and other expenses, as well as for losses sustained by him in and connected with the consulate at Constantinople.

The amount proposed to be appropriated by the bill is the sum of $4,820 99, made up as follows: $431 49 for balance of contingent expenses; $900 for travelling expenses, and $3,489 50 for all other expenses, and as a balance of and a full indemnity for all advances, payments, and losses whatever, as declared by this bill.

IN THE HOUSE OF REPRESENTATIVES, *August* 8, 1856.

Mr. PENNINGTON, from the Committee on Foreign Affairs, made the following report:

The Committee on Foreign Affairs, to whom was referred the memorial of Francis Dainese, late consul at Constantinople, praying compensation and indemnity for services, expenses, and losses, make the following report:

The memorialist held the office of vice-consul, consular agent, and consul, from May 16, 1849, to December 20, 1852, a period of three years, seven months, and four days, as appears by the records of the State Department, (copies of which have been furnished to the committee,) and he claims by his memorial to be allowed the sum of $10,779 49 for compensation, contingent, travelling, and other expenses and losses as such vice-consul, consular agent, and consul, during that period. A part of the amount claimed is for compensation at the rate of one thousand dollars per annum, amounting in all to three thousand five hundred and ninety-five dollars and forty cents, for judicial services, under the act of August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries." This part of the claim is regarded by the committee as wholly inadmissible, for the reasons given at large in the case of George P. Marsh, late minister at Constantinople—a case similar in principle, in this particular, to the one now under consideration.

Another part of the claim of the memorialist is for the sum of six hundred and thirty-five dollars on account of the contingent expenses of his consulate. Upon a careful examination of this item, and after fully investigating his account by transcripts from and inquiries at the Treasury Department, the committee are satisfied there is justly due on this account the sum of four hundred and thirty-one dollars

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and forty-nine cents, which should be allowed; this sum having been inadvertently and erroneously paid to his predecessor, George A. Porter. The difference between the amount claimed and that reported to be due arises from two facts: first, that the memorialist has claimed the allowance for contingent expenses from April 1, 1849, the beginning of the quarter, instead of from May 16th of that year, the commencement of the period of his service; and, second, that there appears to have been paid on his draft in favor of Mr. Porter the sum of one hundred and forty dollars on this account. The memorialist avers that Mr. Porter has never accounted for or paid over this money to him; but the government, with his draft in its hands as a voucher, is clearly not responsible for the alleged delinquencies of Mr. Porter.

Another part of the claim of the memorialist is for the balance alleged to be due to him on account of advances and payments made by him for the relief of refugees with American passports at Constantinople, from 1849 to 1851, both inclusive. The committee have stated this account upon the basis of the allowances actually made to him out of the foreign intercourse fund, under the directions of the State Department, and they find that, to indemnify him fully for these advances and payments, there should be paid to him the further sum of three hundred and forty-one dollars and fifty-one cents. It should be stated, however, that this result is arrived at by computing interest, according to the commercial custom at Constantinople, at the rate of 12 per cent. per annum. The advances and payments made by the memorialist were not authorized by any pre-existing law, (there being no law for the relief of distressed American citizens other than seamen;) but having been made in good faith, and afterwards sanctioned by the government, there would seem to be a manifest propriety in indemnifying the memorialist fully against loss. The committee, however, are aware of the objection existing in the minds of many to the payment of interest in the case of any claim on the government, and have not thought it advisable to embarrass this case by including in the bill accompanying this report any amount for this item, and to advise the memorialist to accept the allowance proposed in full, as stated in this bill. It appears to the satisfaction of the committee, from the examination of numerous public documents in the State Department, that on the 29th of July, 1851, while the memorialist was discharging the duties of the consulate at Constantinople, the persons then having charge there of the affairs of the legation of the United States, forcibly and without authority, violated his consular office, and took thence the public archives and effects, and, as he alleges, also his own private papers therein; and that he was thereby, and by their persistent interference with his official duties, unwarrantably driven from his office, and, for want of competent authority abroad to redress his wrong and protect the public rights and interests intrusted to him, compelled to appeal and resort at once to the Executive of the United States, which he did by repairing to the seat of government, leaving his agent in charge of the consulate during his absence, with compensation at a rate of $500 per annum, which he paid out of his own funds, and for which he has never been reimbursed; that, after a full and protracted examination of the facts of his case, his course

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was unqualifiedly approved by the Executive, (Mr. Webster being then Secretary of State;) that he was thereupon promoted to a full consulship, and, with this higher dignity, directed to repair again to Constantinople, bearing with him an order of the government for the commodore in command of the United States squadron in the Mediterranean to convey him to Constantinople in a national vessel with all the accustomed honors. The following is a copy of the letter addressed by the Secretary of the Navy to Commodore Stringham, then in command of the squadron, to which the committee refers:

"NAVY DEPARTMENT, *April* 13, 1852.

"SIR: I have been informed by the honorable Secretary of State that the President, by and with the advice of the Senate, has appointed Francis Dainese, esq., consul of the United States at Constantinople, and that it is deemed important, for the sake of cultivating the kindly relations that now so happily subsist between the government of the United States and the Sublime Porte, and to inspire a becoming respect for the office of consul in a city where its duties are daily becoming more important, *as well as for other considerations*, that a vessel of war should convey him to his destination from Spezzia, or some other convenient port in the Mediterranean. You will therefore direct the commander of one of the vessels of the Mediterranean squadron to hold his ship in readiness to receive on board at Spezzia, Naples, or such other port in the Mediterranean as may be indicated by Mr. Dainese, and convey him to Constantinople, taking care that the necessary permission be first obtained to pass the Dardanelles.

"You may instruct the commander you may select for this service to pay the accustomed ceremonies and salutes to our consul on his reception on board and departure from his ship, and to omit no demonstration of civility to the authorities of the Sublime Porte.

"I am, sir, very respectfully, your obedient servant,

"WILL. A. GRAHAM.

"Commodore S. H. STRINGHAM,
"*Appointed to command the U. S. Squadron in the Mediterranean, Boston, Mass.*"

For want of a vessel that could be spared for the purpose, or some other cause, this order was not complied with; and the memorialist remained at Syra, in Greece, to which point he went under the directions of Commodore Stringham, awaiting a vessel and the further orders of the government, till December 20, 1852; when a change in the administration of the State Department, on the death of Mr. Webster, he was recalled, and immediately thereupon returned to the United States.

During all this period his agent, employed at his expense to discharge the duties of the consulate, was prevented by the same unwarrantable interference of the officials in the United States legation from performing the functions, and, of consequence, from receiving the fees and emoluments of the office, which at that time were allowed as the only compensation of the officer discharging the duties of the

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consulate. The expense incurred by the payment of compensation to his agent for the period in question—being one year, four months, and twenty-three days—amounted to the sum of $697 90, for which he has received no indemnity by way of fees or otherwise. The expenses of his journeys, made necessary by the circumstances to which the committee have referred, could not have been less than $900 over and above all other expenses for his support and maintenance during the period mentioned, away from his home and official post. There is no defined rate whereby to graduate the allowance that ought to be made to the memorialist for all these expenses; but the committee think it will be just and reasonable to allow him therefor at the rate of the compensation now fixed by law for the consul at Constantinople, together with the sum of $900 for his travelling expenses, including in this all claim for the compensation paid by him to his agent in the consulate.

The committee, therefore, report and recommend the passage of the accompanying bill, which is designed, as its terms import, to be in full of all claims and demands of the memorialist for his travelling, contingent, and other expenses, as well as for losses sustained by him in and connected with the consulate at Constantinople.

The amount proposed to be appropriated by the bill is the sum of $4,820 99, made up as follows: $431 49 for balance of contingent expenses, $900 for travelling expenses, and $3,489 50 for all other expenses, and as full indemnity for all advances, payments, and losses whatever, as declared by the bill.

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 23, 1859.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany bill S. 22.]

The Committee on Post Offices and Post Roads, to whom was referred the memorial of John Scott, Hill W. House, and Samuel O. House, respectfully report:

That the committee refer to the report, (No. 39,) 1st session, 35th Congress, upon same memorial, and recommend the passage of the same bill for the relief of the memorialists which was passed by the Senate during its last session. They accordingly report a bill.

IN THE SENATE OF THE UNITED STATES, *February* 2, 1858.

The Committee on Post Offices and Post Roads, to whom was referred the memorial of John Scott, beg leave to report:

That the memorialist seeks relief from a judgment obtained against him and his sureties for failing to carry into operation a contract for the conveyance of the mail on route No. 3503, from New Orleans to Key West.

It appears that, in 1852, an advertisement was issued, inviting proposals for conveying the mail, by sea, between New Orleans and Key West, and that the contract was awarded to the said Scott for the sum of $20,000.

The route was a new one, and never having been in operation it was difficult to estimate the worth of the service, and the sum proposed by Scott proved, by the subsequent experience of the department, to be vastly less than was necessary for the support of the route.

This fact, however, is not adverted to as a basis for the relief of the petitioner, but as explanatory, in part, of the difficulty he experienced in organizing the means to carry his contract into effect as promptly as might otherwise have been practicable. Immediately upon being informed that the contract was awarded to him, the petitioner proceeded diligently to prepare for its execution, and in his efforts to

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obtain steamships suitable for the purpose, he visited New Orleans, and all the principal northern cities as far as Portland. Finding it impossible to obtain suitable steamers at any reasonable price, and the limited interval for commencing service not affording time to build them, he applied for and obtained an extension of time until the 1st of March. He alleges further, that having been unfortunately taken sick at Washington, he was unable to continue his efforts, and did not succeed in effecting an arrangement for a suitable steamer until the middle of March, when he arranged with Captain Montgomery, who had a new steamer nearly completed at Baltimore, and informed the department of the arrangement, and that the service would be commenced in five weeks.

Before the expiration of that time, the department gave the contract to Samuel S. Green, for $26,000 per annum, and instituted a suit against the petitioner for damages, which suit resulted in the judgment from which he seeks relief.

The contract was made December 9, 1852, and required the commencement of service on the 15th of January following, an interval of only five weeks. The petitioner appears to have employed that very brief time diligently in the endeavor to obtain a suitable steamer, and having failed, obtained an extension of six weeks more; but, in the meanwhile, being prostrated by sickness, he was disabled from pursuing his object, and did not effect an arrangement until a few days after the expiration of the time.

Upon an investigation of the history of the service since that time, it appears that no real damage was caused to the government, for the price at which the contract was awarded would have been totally insufficient to sustain the service.

It seems that the contract was transferred, first, to James C. Green, for $26,000 per annum, who, after performing the service very irregularly for a few months, failed, and it was relet to W. C. Templeton for $42,000, who also performed the service very irregularly; that it was afterwards let to E. G. Rogers & Co. for $41,800, who also failed; and the contract was successively refused by two parties at $48,000; that it was then let to J. M. Howell & Co. for $70,000, who likewise failed to put the service in operation; afterwards to John B. Camden at same rate, who failed; and finally to the present contractors for $70,000, and no damages have been sought against either of these other parties. Taking into view that the route was a new one, and that it was therefore difficult to estimate the proper value of the service; that the petitioner proceeded in perfect good faith, and with great activity and devotion, and at a good deal of personal expense, to give effect to his engagement; and that his failure to commence the service within the brief time allotted was owing to a providential visitation, which prostrated him with sickness in the midst of his efforts; and that he had, in fact, notified the department of his having made suitable arrangements before the contract was transferred to Green; and considering, further, that the experience of the service has demonstrated that it was not possible to be performed for any sum approaching that at which the contract was awarded; and that no damages have been sought against any of the subsequent failing con-

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tractors, the committee have deemed it a suitable case for the application of a just public clemency, and accordingly recommend a remission of the penalty recovered against the petitioner.

A bill to that effect is herewith reported, and its passage recommended by the committee.

POST OFFICE DEPARTMENT, CONTRACT OFFICE,
January 22, 1858.

SIR: In answer to yours of the 19th instant, I have to state that, on the failure of John Scott to put the service in operation on route No. 3503, from New Orleans, Louisiana, to Key West, Florida, the department, on the 4th of April, 1853, ordered a contract with Samuel S. Green, of New Orleans, the next lowest bidder, at $26,000 per annum. He commenced the service on the 21st April, 1853, but ceased in February, 1854, his boat getting aground at St. Marks and being sold as unseaworthy. After an ineffectual effort by the department to induce him to resume, the route was advertised and let to W. C. Templeton, of New Orleans, the only bidder, at $42,000 per annum, from 1st October, 1854, to 30th June, 1855. He performed service till the close of this term. For the succeeding four years term, the route (under the number 6852) was regularly advertised with the other Florida routes, and at the lettings, E. G. & L. F. Rogers, of New Orleans, were the accepted bidders at $41,800 per annum. They put the service in operation accordingly, and continued it till September, 1856, when they failed. The next lowest bids were those of Brooks & Barden, at $40,000, and Walter L. Cozzens, at $48,000. Upon the failure of Messrs. Rogers, the contract was offered, successively, to both these parties and declined by them. The only other bid for the advertised service was at $70,000 per annum. On the 23d January, 1857, a contract was ordered with J. M. Howell & Co., at $70,000. Howell & Co. failing, up to the 14th of March, 1857, to commence the service, the order to contract with them was at that date rescinded, and a contract was ordered with John B. Camden, at the same rate. He failed, however, to comply with the conditions of the order, and the department proceeded to contract with the Southern Steamship Co., E. J. Hart, of New Orleans, president, on the same terms. They commenced service on the 12th May, 1857, and have continued to the present time.

Very respectfully, your obedient servant,

WM. H. DUNDAS,
Second Assistant Postmaster General.

Hon. D. L. YULEE,
Senate United States.

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 23, 1859.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany bill S. 23.]

The Committee on Post Offices and Post Roads, to whom was referred the memorial of Arnold Harris and Samuel F. Butterworth, respectfully report:

That the committee refer to the report, (No. 151,) 1st session, 35th Congress, upon the same memorial, and recommend the passage of the same bill for the relief of the memorialists which was passed by the Senate during its last session. They accordingly report a bill.

IN THE SENATE OF THE UNITED STATES, *April* 5, 1858.

The Committee on Post Offices and Post Roads, to whom was referred the memorial of Arnold Harris and Samuel F. Butterworth, respectfully report:

That the petitioners ask relief from a penalty they have incurred as sureties of William G. Kendall, lately a deputy postmaster at New Orleans. The memorial is as follows:

MEMORIAL,

To the Senate and House of Representatives of the United States in Congress assembled:

The memorial of Arnold Harris and Samuel F. Butterworth respectfully showeth:

That on the 14th of April, A. D. 1853, they signed the official bond of William G. Kendall, late postmaster of New Orleans, as his sureties in the penal sum of sixty thousand dollars. On the 7th May, 1855, Kendall was dismissed from the office of postmaster at New Orleans; was arrested, charged with having robbed the mails; was

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indicted, tried, and acquitted. After his arrest, and before his trial, his account was stated by the Post Office Department, showing a balance against him, as postmaster at New Orleans, of $10,839 19. This account was presented to Kendall; he failed to pay any part of it. Early in January, 1856, your memorialists were called upon by the Post Office Department to pay up the sum of $10,839 19, as sureties for Kendall; on the 7th January, 1856, your memorialist, S. F. Butterworth, deposited with the United States assistant treasurer at New York the sum of $5,000 to the credit of this account; on the 19th of January, 1856, he deposited, in like manner, the further sum of $1,950. And on the 21st January, 1856, your memorialist, Arnold Harris, deposited with the Auditor of the Post Office Department at Washington the sum of $3,889 19, being the balance claimed by said account to be due from Kendall, as postmaster at New Orleans, to the United States. Soon after this, Kendall was tried by a jury at New Orleans, and acquitted. He immediately left the United States and went to Mexico, where he now resides. After he had thus left the United States, on the 18th day of September, 1856, your memorialist, Samuel F. Butterworth, received a letter from the Auditor of the Post Office Department, (see copy annexed,) informing him that in making out the account against Kendall an error had been made, and that there was still due the department, from Kendall, the sum of $5,365 47.

When the account was first stated by the department, showing a balance against Kendall of $10,839 19, he (Kendall) insisted that there was no such amount due from him, and that the claim was made merely to present him as a defaulter, and thus prejudice his case before the jury. Your memorialists, not doubting his statements, and certain of his innocence, paid the claim without investigation as soon as it was presented to them, and they did this to insure Kendall a fair trial, and because they knew that all of his available means were required by him to prepare for his defence; but your memorialists distinctly state that if the department had at first claimed a balance of $16,204 66 as due from Kendall, they certainly would not have paid that large sum without investigation and legal resistance, unless first indemnified by Kendall or his relatives.

By direction of the government, suit was instituted against Kendall (whose last known place of residence was in Missouri) and your memorialists in the United States circuit court of Missouri to recover this last claimed balance of $5,365 47; process was served at the late residence of Kendall; your memorialists appeared by attorney, and suffered judgment to be obtained against them by default.

The only explanation, or rather excuse, given by the Post Office Department for the "grave error" in rendering the first account against Kendall for a sum of $5,365 47 less than was really due the government, was the fact that the clerk who made out the account was intemperate!

Your memorialists ask the Congress of the United States to release them from the payment of the judgment rendered against them as above stated, and they assign as a sufficient reason for such request the fact that, by the action of an intemperate clerk in the Post Office

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Department, (since dismissed,) they have been deprived of all remedy against Kendall, who had departed from the country before the last claim of $5,365 47 was made known to either of your memorialists.

A further fact your memorialists present: Kendall, charged with a high crime, was vigorously prosecuted; extraordinary means were used to procure his conviction; the United Sates district attorney at New Orleans was not deemed equal to the occasion; other distinguished counsel was employed, who boasted that he was to receive a fee of $5,000 from the government in the event of Kendall's conviction. To meet this unjust persecution and monstrous proceeding, on the part of the United States, Kendall was compelled to expend large sums of money to retain the services of Senator Benjamin and other eminent lawyers; to procure the attendance of important witnesses; and to conduct his defence to a successful issue, more than his life, his honor, and his liberty were involved in the contest, not a particle of proof of guilt was produced, he was acquitted.

The moneys thus expended by Kendall, but for the action of the government, would have constituted a means of paying any real balances due from him as postmaster. By the oppressive action of the government he was deprived of these means. Under these circumstances your memorialists submit that his sureties ought not to be called on to make good the moneys thus expended.

The above facts considered, your memorialists ask such relief as the Congress of the United States may deem just and proper.

S. F. BUTTERWORTH.
ARNOLD HARRIS.

Subsequently a letter from one of the petitioners, in reply to an inquiry from the committee, was submitted, which is as follows:

NEW YORK, *March*, 20, 1858.

DEAR SIR: A memorial from Arnold Harris and myself, as sureties of William G. Kendall, late postmaster at New Orleans, has been referred to the Committee on Post Offices and Post Roads, of which you are chairman. We omitted to state in that memorial anything in relation to the capacity of Mr. Kendall, at the time of his acquittal, to pay or secure the amount claimed as due the Post Office Department from him. It may be said that unless we can show that Mr. Kendall could have been forced to pay, we lost nothing by his departure from the country. The fact is, that Mr. Kendall possessed a valuable property at Biloxi, Mississippi, (represented to be worth over $12,000,) which property he settled upon his wife before he left the country, and proceedings are now pending in the United States circuit court, in behalf of the United States, to set aside this settlement, and to subject this property to the satisfaction of the judgment rendered against Kendall. Had we have known of the existence of this large claim against us, as sureties of Kendall, before his departure from the country, we certainly could, by the application of the sub-treasury law, have compelled Mr. Kendall to apply this property to the payment of this claim, instead of settling it on his wife. There can be no doubt of this. Mr. Kendall would have exhausted his own prop-

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erty not only, but also that of his relatives, rather than have suffered the penalties of the law as a defaulter.

I am, with great respect, your obedient servant,

SAM. F. BUTTERWORTH.

The facts alleged by the memorialists are sustained upon inquiry.

The parties appeal to the equity of the government to protect them from a loss caused by the laches of one of its officers.

When these parties became sureties they reasonably looked with reliance upon the guards which the laws created against default of its officials for their protection. They had a right to expect correct and accurate accounts to be kept by the government, quarterly settlements, and such prompt resort to the vigorous and sufficient means of enforcing payment of balances as the sub-treasury law provided. They had a right also to expect early and accurate notice of any default, that they might employ the usual means of securing themselves from damages.

It appears that through the fault of the government, no matter from what cause, they were deceived as to the amount due to the government by Mr. Kendall, and were not apprised of a different state of the account, and of a further balance claimed, until the principal had disposed of his property and left the jurisdiction of the United States. If the government had used the proper care and diligence, his departure would have been prevented, and in all reasonable probability the amount recovered. The government was the custodian of the accounts. It alone could know the true state of indebtedness; the sureties could only know through the government. When, upon being informed by the government of the balance owing, they generously came forward and paid the amount from their own private means, they had a right to regard their obligation as discharged, and to discharge their minds from any further vigilance in the transactions of Mr. Kendall. Thus, by the default of the government, they have suffered a damage, and although the case is not one which would secure them immunity in a court of law, yet it presents a fair case for the clemency and consideration of the government.

The committee think that the government may properly relax its strict legal claim, and in consideration of the large amount already voluntarily paid by these sureties, and the injury caused to them by the laches of its own officers, release them from from further liability. They accordingly report a bill for the relief of the petitioners.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 4.

IN THE SENATE OF THE UNITED STATES.

JANUARY 4, 1860.—*Ordered*, That the report of the Committee on Foreign Relations (No. 182, 34th Congress,) be printed.

IN SENATE, *May* 26, 1856.

Mr. MASON made the following

REPORT.

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, esq., acting consul of the United States, praying compensation for diplomatic services, have had the same under consideration, and now report:

It appears from the memorial that on July 19, 1850, on the recall of Mr. J. B. Clay, chargé d'affaires of the United States at Lisbon, the archives of the legation were placed in the hands in the memorialist, then the acting consul of the United States at that port. That from that time to June 15, 1851, when Mr. C. B. Haddock, the successor of Mr. Clay, arrived in Lisbon, the entire duties and responsibilities of the legation rested upon and were performed by him. That during that time the fees and emoluments derived from the consulate were insufficient to pay the current expenses of the office, and that he has received no compensation whatever for the additional duties and responsibilities devolved upon him by having the charge of the legation.

The statements of the memorial are fully sustained by a letter from the Secretary of State, dated February 29, 1856, as to the time during which the affairs of our legation at Lisbon remained in Mr. Martin's charge, and the justice of his claim for compensation is strongly urged in a letter from Mr. Haddock, United States chargé d'affaires at Lisbon, dated January 18, 1853.

Regarding this case as being within the principle heretofore established in the allowance of similar claims, the committee report a bill for the relief of the memorialist, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1860.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 55.]

The Committee on Indian Affairs, to whom was referred the petition of Tilman Leak, beg leave to make the following report:

The petitioner represents that on the 7th day of May, 1856, he purchased from William Garrett, who was appointed agent to sell the "dead and abandoned Indian locations" for the State of Alabama, belonging to the Creek tribe of Indians, fractional sections six and seven, township 19, range 18, under an act of Congress passed in 1857, for which he paid the sum of $679 57. He further states that the said fractional sections were sold as an entirety, and that on application at the proper department for confirmation of titles to said purchase and for a patent thereon, he was informed that the fractional section seven was already sold and patented to William A. Campbell on the 8th of September, 1835. The petitioner states that fractional section seven being thus patented and previously sold as an entirety, and that he purchased the same, and that by taking from the said fractional section seven it materially detracts from the value of the remainder of said land, particularly as on the said fractional section seven there is a ferry and privileges thereto belonging. He therefore prays that there be refunded to him the amount he paid for said land, $679 57, with interest at eight per cent. added from the date of purchase, the 7th of May, 1856.

The testimony in this case shows that, under the treaty of March 24, 1832, with the Creek Indians, the fractions alluded to, a certain Creek Indian had those lands assigned to him, being the amount he was entitled to as a head of a family of that tribe; that it was sold, as stated by the petitioner, under the authority of the President of the United States, as public land, and patented to said Campbell, as stated by the petitioner, and that the said Campbell and those claiming under him have remained and are now in uninterrupted possession of the same. The testimony further shows that the sale of the said fractions to the petitioner was an entirety, and that the loss of fraction seven, which had been previously sold, as above stated, does

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materially affect the value of said property. Your committee therefore recommend that the said sale made to the petitioner be rescinded, and the amount paid into the treasury of the United States by the petitioner be refunded to him, and report the accompanying bill for his relief.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1860.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany Bill S. 60.]

The Committee on Naval Affairs, to whom was referred the memorial of Ann Scott, have had the same under consideration and report:

The memorialist alleges that she is the widow of the late William B. Scott, who was appointed navy agent at Washington city in the year 1834, and for the faithful performance of the duties of which office he gave the bonds required; that in the year 1839, in addition to his duties as navy agent, he was charged with the payment of navy pensions, and in consequence was required to increase the penalty of his bond under separate sureties as navy pension agent, as well as to employ extra force in his office, for which no provision was made at the time of his appointment, and that he continued so to disburse the amounts due to said pensioners until June 5, 1849, when he ceased to be navy agent.

Your memorialist further alleges that judgment was obtained against her said husband by the United States, for the sum of $6,000, or thereabouts, being money retained by him on account of services rendered in the disbursement of pensions; and that he, notwithstanding the uniform practice of allowing to other pension agents (an office entirely distinct from that of navy agent) a percentage on the disbursements made by them, was debarred an offset to said judgment in his claim for commissions for similar labor and responsibility; and further, that in order to satisfy said judgment it was necessary to sacrifice property to which she was entitled in her own right.

The memorialist, therefore, prays that the accounts of her said husband may be adjusted and settled, after allowing therein such commission as has been allowed to his successor, who went into the office of navy agent with the duty of pension agent attached thereto at the time of his appointment, and at his acceptance of said office, which, as heretofore shown, was not the case at the time of the appointment of her husband.

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From facts before your committee it appears that the said William B. Scott, besides performing the full duty of navy agent, as defined at the time of his appointment, and other onerous duties devolved upon him by the Navy Department in *payments made by him to contractors who, by the terms of their contracts, were to be paid at other places than at Washington, and by other agents*, disbursed, during the period in which he acted as pension agent—about ten years—the sum of $179,491 32.

From the very large additional risk, responsibility, and labor devolved upon the said William B. Scott by these new duties, for the proper performance of which separate bond was required and given, as well as the losses of property occasioned to him thereby; and from the fact that it was not a part of his office at the time of his appointment as navy agent, as well as the further fact that his successor was allowed and paid a commission for similar services, your committee deem this a case of peculiar hardship, and that in justice and equity the memorialist is entitled to the relief from Congress she prays, for which the accompanying bill is reported, with the recommendation that it do pass.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 7.

IN THE SENATE OF THE UNITED STATES.

JANUARY 17, 1860.—Ordered to be printed.

Mr. FESSENDEN made the following

REPORT.

[To accompany Bill S. 74.]

The Committee on Finance, to whom was referred the petition of Edward N. Kent, with the accompanying papers, report:

That the petitioner is the inventor of an "apparatus for separating gold and other precious metals," which has been secured to him by letters patent, dated December 4, 1855, and February 26, 1856, respectively.

Mr. Butterworth, superintendent of the assay office at New York, in a letter to the chairman of your committee, dated January 20, 1857, says:

"In the operations of melting and refining, a considerable portion of the precious metals will be temporarily absorbed by the crucibles and fluxes, and mixed with the ashes of the furnace and the sweepings of the floors. A large amount of material thus accumulates, from which, by some method, the precious metals must be recovered. The amount thus recovered at this office is about $200,000 per year. A portion still remains, however, mixed with the materials which have been subjected to the processes employed. This residuum is technically termed '*sweep*,' and it has been the practice of the government to sell this sweep to the smelters of this country and of Europe."

It has been proved to your committee that the method employed in minting operations, previously to the invention and employment of Mr. Kent's apparatus, for the purpose of recovering the precious metals thus accumulated, was exceedingly imperfect and defective. It was very prejudicial to the health of persons exposed to the operation, by reason of the large quantities of fine dust liberated in sifting—so much so, in one instance, as to cause death. It was expensive, requiring a large amount of labor, crucibles, and fluxes; and it occasioned a very considerable per centage of yearly loss in the "sweep" sold, namely, about ten to twelve cents per pound.

Mr. Kent's apparatus was introduced, at his request, into the assay office at New York, in July, 1855, with a view of testing its merits. It was designed by the inventor to lessen, or avoid, all the difficulties above stated, particularly by recovering a much larger portion of the

precious metals from their admixture with the substances, so to impoverish the *sweep* as to diminish the per centage of loss on its sale.

The apparatus proved so successful, in all particulars, as to induce the director of the mint at Philadelphia to direct an examination and report upon its merits. The report was of so favorable a character as to lead to its subsequent introduction, with the approval of the Secretary of the Treasury, into the principal minting establishments of the United States, in all of which it has since continued in constant use.

The testimony furnished by Mr. Kent, which accompanies his petition and this report, comes principally from the officers of the mint at Philadelphia and the assay office at New York, and establishes, to the entire satisfaction of your committee, the great importance of the apparatus in minting operations. It accomplishes all the purposes for which it was designed.

Mr. Butterworth, in the communication before cited, says:

"Mr. Kent's invention effects a saving of two-thirds the labor required by the old process; it supersedes almost entirely the expensive operations of fluxing, owing to the thoroughness with which it separates the precious metals from the sweeps; and, by impoverishing the sweeps to one-tenth their former value, it effects a very material diminution of the loss on their sale in the market. I am satisfied that the saving to the government, effected by Mr. Kent's invention, at this office alone, is about $6,000 per year."

The evidence is equally conclusive that, by avoiding the dry sifting, this apparatus relieves the workmen from all the deleterious effects upon health produced by the old process.

By calculations made at the mint and assay office, there can be no reasonable doubt that the saving to the government effected by Mr. Kent's apparatus, at those two establishments, will amount, in the fourteen years of his patent, to a sum exceeding $120,000. Estimating an equal saving at the other establishments, which the witnesses assume to be a fair basis of calculation, the whole benefit derived by the government from this important invention, during the continuance of the patent, will exceed $240,000.

It is quite obvious that the use of Mr. Kent's apparatus is of too much importance and value to be dispensed with in the minting operations of the government. It is equally obvious that it can only be used legally with his consent. Were it otherwise, there is no reason why the United States should not afford him a just and reasonable compensation for great benefits received through his labor and ingenuity. One of the witnesses, (Mr. Terry,) who has been connected with the assay office from its commencement, says in a letter to Mr. Kent: "Your apparatus is constructed on the soundest principles of mechanical and chemical science, and is, I think, hardly susceptible of much improvement."

All the principal officers connected with both the establishments before named concur in the opinion that Mr. Kent is honestly entitled to remuneration, and that the continued use of his apparatus in all the minting operations of the United States cannot be dispensed with.

The case is not without precedent. The sum of $2,500 was hereto-

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fore appropriated by Congress for the purchase of the perpetual right to use, in the mint and branch mints of the United States, an apparatus invented by Rufus Tyler for counting coins.—(U. S. Statutes, vol. 5, p. 688.)

The petitioner thinks that he is entitled to receive from the government the amount of $20,000 for the perpetual right to use his apparatus in all the minting establishments of the United States. Taking into consideration the great benefits conferred, the fact that this sum is only one-twelfth of the amount which will be actually saved to the government through his instrumentality, and the very limited compensation which he will be likely to receive from other quarters, your committee think his demand not unreasonable, and accordingly report a bill for his relief.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 17, 1860.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 76.]

The Committee on the District of Columbia, to whom were referred various memorials and petitions from the corporate authorities, the trustees of the public schools, and citizens of the city of Washington, praying congressional aid for the public schools in said city, have had the same under consideration, and report:

First. That there are no unsold lots of material value in the city of Washington, and therefore it is useless to deny or grant so much of the prayer of the petitioners as seeks a donation of these lots to the public schools of said city.

Second. The policy of granting lands in aid of public schools in the new States and Territories appears to your committee to have been eminently wise and free from all constitutional objections. But when it is proposed, as by these memorialists, to extend that policy to the District of Columbia, new and grave objections arise. These objections are not only to the expediency, but, in the judgment of many, to the constitutionality of the proposed measure. Without discussing the question, your committee report that, in their opinion, it is not proper, at this time, to make a grant of public lands to aid the public schools in the city of Washington.

Third. The proposition to appropriate money in aid of these schools has engaged the attention of the committee.

It appears, according to the best data attainable by your committee, that the government owns about one-half in value of all the real estate in the city of Washington. On this it pays no taxes. The citizens are heavily taxed for the various purposes of city government, and the United States makes large appropriations for purposes of its own within said city. While the city appropriates largely from a common treasury for the support of schools, the United States never has appropriated a dollar for that object.

On the 1st December, 1857, there were in the city of Washington more than five thousand children, between the ages of five and eighteen years, who attended no school. Of these, it is believed, more than

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two-thirds have been attracted to this point by the government. They are the children of persons in the service of the United States, many of whom have no taxable property in the city, and very little anywhere else.

Of these five thousand who attended no school, one-half at least, perhaps more, were the children of parents too poor to bear the expense of their education, and they must grow up in ignorance, unless educated at the public expense. It would seem hardly fair to throw them as an exclusive burden on the private property-holders of this city.

There are in the public schools of the city three thousand one hundred pupils, besides three thousand two hundred in the private schools. The public schools are maintained mainly out of the city treasury, and there has been appropriated for their support for the present year $28,933, besides $25,000 for the erection of new school-houses, making in all $53,933.

Your committee has found a healthy state of public sentiment in the city on the subject of education; many of the largest property-holders not only consenting to, but urging, an additional special tax for school purposes. The assessed value of property in the city is $34,493,000, yielding a revenue, at the present rate of taxation, of $206,957, about 10 per cent. of which is appropriated to the support of public schools. The city has a permanent school fund invested which yields $3,240 per annum; and the poll tax, amounting to about $5,500 annually, goes also into the school fund. It is now proposed to levy a special tax of ten cents in the hundred dollars for the purpose of aiding the schools. This will raise about $34,500 per annum, which, added to the interest on the invested school fund and the poll tax, will be equal to about $44,000 a year. If the city was well supplied with school-houses, this sum would go far towards meeting the desired object of placing a school within the reach of every child in the city; but there is, unfortunately, a great deficiency in school accommodations.

In view of all these facts, your committee think it expedient for Congress to pass an act surrendering to the school fund of the city the fines and forfeitures in the district courts, and hereafter to be collected, until the same shall reach $50,000, the money to be applied to the erection of permanent school-houses.

The fines and forfeitures vary in amount per annum, according to the number and magnitude of offences against the criminal laws. In the years 1856 and 1857 the total of forfeitures was $9,565 50, and of fines $1,652 50. Of these sums only $1,482 appears to have been collected. By surrendering this fund to the public schools there will be created an additional incentive to more rigid collections in future; and thus the double benefit of aiding the schools, and punishing offenders with more certainty, will be obtained.

In addition to this provision, your committee propose an annual appropriation from the national treasury of $25,000, for five years, on the condition that the citizens submit to the tax above alluded to—that is, a tax of about $34,500, in the aggregate, for the special purposes of the public schools; thus the government will pay, for a limited

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time, about one part, and the citizens two parts of the expense of keeping up the public schools; and it is hoped, with this aid, these schools in five years will be put on such a solid foundation that they can be sustained without aid from the government.

In accordance with these views, your committee report a bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 17, 1860.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany Bill S. 50.]

The select committee, to whom was referred the bill S. 50, "to prohibit the issue of bank notes by corporations, associations, or individuals, within the District of Columbia; and further to prevent the circulation of bank notes issued by any incorporated company or association of individuals, located beyond the limits of the District of Columbia, of a less denomination than twenty dollars," having had the same under consideration, beg leave to report:

That it is, with slight modifications, similar in its provisions to a bill reported by a select committee to the Senate on the 28th January, 1858. That committee entered into an investigation of the questions which had been referred to them under a resolution of the Senate of the 17th December, 1857, directing them "to examine into the condition of the corporations or associations acting as banks of deposit, discount, and issue in the District of Columbia, and the authority under which said corporations or associations assume to transact the business of banking; also to inquire whether any, and what, further legislation is necessary to regulate and control banks of deposit, circulation, and issue in the District of Columbia," and made the following report:

In pursuance of the power conferred upon them, your committee addressed the following circular to the several corporations or associations carrying on business in the District of Columbia as banks of issue, to wit: the trustees of the Bank of the Metropolis, Bank of Washington, Patriotic Bank, Farmers and Mechanics' Bank of Georgetown, and the Bank of Commerce of Georgetown:

SENATE CHAMBER, *December* 23, 1857.

SIR: I have been instructed by the select committee of the Senate, appointed to examine the condition of the corporations or associations acting as banks of deposit, discount, and issue in the District of Columbia, to request that you will furnish, at as early a day as possible, a full statement of the affairs of the board of trustees of the , detailing the assets and liabilities of the same, with full and complete list of its debtors; the amounts due by each;

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when their obligations were contracted, and when they mature; how the same are secured, and any other information which you may consider as proper and necessary to a just appreciation of the condition of its affairs.

Very respectfully, your obedient servant,

JOHN SLIDELL, *Chairman.*

The circular was sent to the last-named institution under the erroneous impression that it was in the same category as the four others, receiving its title and exercising its powers derivatively from a special act of incorporation. It appears, however, that the Bank of Commerce was organized in 1852, by an association of individuals claiming no peculiar immunities or privileges, but forming a partnership for the transaction of banking business, under no other obligations or restrictions than those resulting from the general law regulating commercial partnerships in the District of Columbia, and therefore not subject to the supervision of Congress in the administration of their affairs. If the partners have violated the law, as in the opinion of your committee they have, by issuing notes for circulation, they are only amenable for such violation to the ordinary judicial tribunals. The president, however, furnished a statement of the condition of the bank, which will be incorporated in the general statement of the affairs of all the banks of issue, for the purpose of presenting a synoptical view of the extent and character of their operations. To understand the present condition and rights of the other associations, it is necessary to present a brief history of their origin, of the several acts of Congress amending or extending their charters and providing for the liquidation of their affairs.

The Bank of Washington was incorporated February 15, 1811; the Farmers and Mechanics' Bank, Patriotic Bank, and Bank of Metropolis, March 3, 1817. By the act of March 2, 1821, the charters of all these banks were extended to March 3, 1836; and by act of February 9, 1836, they were further extended and limited to October 1, 1836; and again, on July 2, 1836, extended to July 4, 1838; on May 31, 1838, they were extended to July 4, 1840; on July 3, 1840, they were further continued to July 4, 1844. By this act Congress adopted the policy of liquidating all the incorporated banks in the District of Columbia. The country was then slowly recovering from the disastrous consequences of the general suspension of 1837, and the mischievous effects of a debased currency were felt and appreciated by all classes of the community. As the act of July 3, 1840, seems to have escaped the attention of the courts and jurisconsults, whose judgments and opinions have been invoked to sustain the present action of the banks originally deriving their charters from Congress, it may be well to give its provisions in full. It is to be found in the 6th volume of Brown and Little's edition of Statutes at Large, page 802. Why it was placed among the private statutes, when every other act relating to a bank or banks in the District of Columbia has been classed with the public acts, is not the province of your committee to decide. The failure of the trustees and counsellors of the banks to take any notice of it, in the various arguments they have adduced to sustain the

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legality of their operations, since July 4, 1844, might, perhaps, warrant the suspicion that this deviation from the ordinary classification was not accidental. It is entitled "An act to continue the corporate existence of certain banks in the District of Columbia for certain purposes." It declares that "the provisions, restrictions, and enactments of the act of Congress of May 25, 1838, entitled 'An act to extend the charter of the Union Bank of Georgetown, in the District of Columbia, be, and the same are hereby, extended to the Farmers and Mechanics' Bank of Georgetown, the Bank of the Metropolis, the Patriotic Bank of Washington, and the Bank of Washington: *Provided*, That whenever, in the original act, the 1st July, 1838, occurs, it shall be so construed as to mean the 4th July, 1840; and whenever the 1st July, 1842, occurs, it shall be construed to mean the 4th July, 1844.'"

The preamble states the motives and object of the law; it is in these words: "Whereas it appears that an extension of the charter of the Union Bank of Georgetown beyond 1st day of July, 1838, together with some amendment thereof, is necessary to enable the said corporation the better to close its concerns, redeem its obligations, and collect its debts; and the extension and amendment aforesaid have been asked by the said corporation for the purposes above specified, and for none other." The 3d section provides for a meeting of the stockholders, who may elect a trustee or trustees, not exceeding three, to whom shall be granted until July 1, 1842, (July 4, 1844,) the management of the concerns of the bank as fully and with the same limitations, together with others thereinafter to be named, as were then given to the president and directors of said corporation. If trustees be elected, the president and directors shall appoint a commissioner to transfer to the trustees all the property of the corporation, upon the condition, first, of discharging all the debts due from said corporation; and, after the satisfaction of this trust, upon such other trusts and conditions, not inconsistent with their charter as therein amended, as they may see fit. The 4th section provides that the said corporation shall not, after July 1, 1838, (July 4, 1840,) issue or reissue any bills, notes, or checks payable to bearer, nor issue certificates of deposit payable to bearer, nor receive any money or other property from any other corporation, and from any person other than one of its stockholders on deposit, and under obligation to return it; nor shall the said corporation, at any time after the 1st of July, 1838, receive or enter into any new obligations or liabilities other than such deeds or assignments as may be necessary to convey away absolutely the property, real or personal, of the said bank, or other than the renewal from time to time of existing debts due said corporation on the receipt of partial payments, and the taking of such obligations, additional assurances, new liens, or new sureties, as may be necessary and proper for securing the collection of debts due to the said bank on the first of July, eighteen hundred and thirty-eight, and for enforcing the performance of obligations created on or before the day and year last aforesaid.

The act then goes on to provide remedies for recovery of debts due to corporation. The 8th section declares that, unless the president and directors, for the time being, of the said corporation, shall, on be-

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half of the stockholders, and in virtue of an authority from a majority in interest and number of them, file their declaration in writing in the office of the Secretary of the Treasury within six months from the date of the act, assenting to and accepting the extension of the charter thereby granted, under the terms, conditions, and limitations contained in the act, the corporation shall forfeit all right to an extension of the charter. By the annual letter from the Secretary of the Treasury, it appears that the Bank of the Metropolis, Bank of Washington, Patriotic Bank of Washington, and Farmers and Mechanics' Bank of Georgetown, severally filed, before the expiration of the six months limited by the act, the certificate of the president and directors assenting to and accepting its terms and conditions. It would naturally be supposed that these conditions having been voluntarily accepted by the banks, they would have proceeded in good faith to comply with them. Not so. They continued to importune Congress for a renewal of their charters and the restoration of their old privileges; but, failing in this, no further legislation is to be found in relation to them, except the act of June 17, 1844, which merely provides that suits might be commenced or continued by or against the banks, as if their charter did not expire on July 4, 1844. This act would seem to have been quite unnecessary for the purposes enumerated, every proper remedy having been granted by the provisions of May 25, 1838, for the recovery of debts. This is expressly declared in the opinion of the counsel of the Bank of Metropolis, dated June 25, 1844, sent to the committee by the president of that association. It would be difficult to suppose any other motive for the application to Congress than the hope that, by enlisting its sympathies in favor of the stockholders on the plea that unless the charters were renewed, there could be no means of collecting the debts due to the banks, they would thus obtain some legislation that would enable them to continue their business. This fact, with others, strongly illustrating the bad faith of these corporations, is forcibly stated by a select committee of the House, of which Mr. Burke, of New Hampshire, was chairman, in a very able report made on the 25th February, 1845.

Failing in their efforts to obtain the renewal of their charters, the banks determined to evade, or, rather, flagrantly to violate, all the conditions imposed upon them by the act of 3d July, 1840, adopting the provisions of that of 25th May, 1838, to which reference has been heretofore made. No axiom of law is better established or more universally recognized than that no man or set of men can convey to others a greater power than that which they themselves possess: the delegated power can never exceed the original. It would be idle to quote authority to establish a principle so rudimental. The mode of operation in the case of the Bank of the Metropolis, and the same course was substantially pursued by the other banks, was this: the stockholders were convened, the president and directors were selected as trustees. They could not execute an assignment to themselves, and Richard Smith, the cashier, was selected as the agent and conduit through whom the property and effects of the old were to pass to the trustees of the new institution. The transfer was made to Smith on 3d July, 1844, who then assigned them to the trustees.—(Merrick *vs.* Trustees Bank of the Metropolis, 8 Gill's Reports, page 69.)

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It thus appears that the president and directors sold nominally to their cashier, but, in fact, to themselves, as trustees, without consideration, or if any were named, it was, of course, purely fictitious, all the assets of their respective institutions, with power to carry on a general banking business, without any of the restrictions and safeguards for the community under which they had acted as corporations. A more shameless attempt to evade the express provisions of law cannot well be imagined; and the committee believe that if the acts of May 25, 1838, and 3d July, 1840, had been submitted to the court of appeals of Maryland, in the case of Merrick *vs.* Trustees of Bank of Metropolis, the decision would have been very different. In that case it was decided that the penal sections of 3d March, 1817, to which the committee will allude in connection with the legality of the present issues of notes by these banks, were repealed; that consequently a note discounted by the bank in the ordinary course of business, the proceeds of which would be paid out in the bills of the bank, was not given for an illegal consideration, and therefore not null and void. The court expressly says, in its decision, that it considers the penal sections of the act of 1817 to have been repealed, and that "at the same time it is conceded that there is no other action of Congress, at least none has been referred to, as reaching these plaintiffs." Your committee do not, however, assent to the reasoning of the court of appeals of Maryland in the case above cited. The act of 3d March, 1817, is entitled "An act to incorporate the subscribers to certain banks in the District of Columbia, and to prevent the circulation of the notes of unincorporated associations within the said District." It had two objects—one special, the other general. The special object was to create certain corporations, investing them with certain privileges and immunities, to be enjoyed under many salutary restrictions, and to be limited in its duration, namely, to 1st January, 1822. The general object was to protect the community against the issue of notes for circulation by unauthorized and irresponsible companies or individuals; this, as the danger to be guarded against, was one at all times likely to occur—was permanent. It was a criminal statute, and intended always to be in force until expressly repealed. When the charters of the banks were about to expire, the act of 2d March, 1821, was passed under the title of "An act to extend the charters of the banks in the District of Columbia." The title here indicates the purpose. The 1st section provides that the acts incorporating the several banks of the District of Columbia herein named be, and the same are hereby, extended and limited to 3d March, 1836, under and subject to such limitations, modifications, and conditions as are hereinafter enacted. These are all confined specially to the banks named; the last section, in the opinion of the committee, completely repudiates the idea that the act was intended to apply to any other subject than the incorporated banks. It declares "that so much and such parts of the said acts incorporating the several banks aforesaid as may be repugnant to this act be, and the same are hereby, repealed and annulled." The provisions of the act of 1817 being limited to January 1, 1822, it was necessary to extend them, if the existence of the banks was to be continued; and, to preserve a proper control over them,

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public policy required that their duration should be limited. The penal sections were for all time, did not require renewal, and, consequently, neither the renewals nor limitations can be considered as applying to them.' But, while the opinion of the committee is very decided on this question, as the judge of the criminal court of the District of Columbia, from whose judgment, it seems, there is no appeal, has decided that an indictment cannot be maintained under the act of 1817 for the issuing of bank notes, they think it expedient to remove all doubts on the subject by the passage of a law for its prohibition. The question as to the legality of the contracts made by the banks who have heretofore enjoyed the privileges of incorporation is one between them and their debtors, in which the public has no concern; and the committee has no disposition to speculate about the probable result of any question of that kind that may hereafter be brought before our judicial tribunals. That of the currency is of a very different character; it affects the interest of every member of the community, and Congress is bound, not only as the special guardian of the people of the District of Columbia, but for the sake of example to the nation at large, to watch, with the most jealous eye, everything that may have a tendency to debase it. Were there any reasonable hope that we could return to what the committee considers to be the true theory of the Constitution, a total prohibition of the circulation of paper money, issued under the authority of the several States, they would give such a measure their cordial support. But, believing that the time is yet distant when the national mind will be prepared for the adoption of a purely metallic currency, they will make no suggestions of a general character, and will confine themselves to the subject immediately referred to them.

The table which is herewith presented shows conclusively that the issue of notes by the banks of the District of Columbia may be immediately suppressed without any inconvenience to the community. The aggregate net circulation amounts only to $265,929, assuming that at least $50,000 of the notes are held by the banks themselves, while, if their statements be correct, they have in their vaults $310,646 49. Deducting from the aggregate net circulation one-third, or $88,643, which is the lowest proportion of specie which a safe banking system would require as a sound basis of circulation, it appears that the difference between these sums, exhibiting the whole amount of active means which would be withdrawn from the funds employed by them in discounting the paper offered by their customers, is but $177,286. The interest on this sum, at six per cent., is $10,637 16. This is the extreme limit of the annual diminution of the profits of the stockholders by the suppression of their circulation; but when the additional expense attending this branch of their business is taken into account, it may well be questioned if any advantage be derived from it. But small as this circulation would appear from the returns to be, your committee believe that it is now larger than it was on the 26th September last, when they suspended specie payments. Immediately after that date large quantities of notes freshly signed, many of them even bearing a subsequent date, appeared; whether they were paid out to depositors distrusting their solvency, or the banks increased

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their discounts, your committee has not been permitted to examine; but the following extract from a letter from the president of the Bank of Washington, under date of January 12, addressed to the committee, will throw some light on this branch of the question: "Owing to the large amount of specie monthly disbursed by the government in this city, the circulation of the District banks has, of late years, been nearly nominal, the chief currency having been gold and silver and notes of banks below par, the latter not being received as bankable funds. The circulation is larger now, in consequence of specie being at a premium, and because the trustees were solicited by merchants and others to increase their issues, and thereby keep other notes of doubtful value from being introduced."

The novel information that specie is at a premium, and not the notes of the District banks at a discount, and the very ingenuous declaration that their failure to pay them when presented for redemption, has enabled them to increase their circulation, offer a fair exposition of the principles on which those institutions are conducted. The worthy president of the Bank of Washington has given the best possible reason for the suppression of District bank notes—the regular disbursements of the treasury in gold and silver furnish all the circulating medium required; those disbursements exceed in the aggregate six millions of dollars per annum, or five hundred thousand dollars per month, the latter sum being double the net circulation of all the banks of the District, even when stimulated by the suspension of specie payments.

But whatever advantage they may or might have derived from their circulation, these banks have no claim upon the indulgence of Congress. They exist and carry on business, if not in direct and open defiance of law, as your committee believe, certainly by a most shameless violation of the spirit of our past legislation. They have, with one honorable exception—viz: the Farmers and Mechanics' Bank of Georgetown—refused to give the committee such information as will enable it to form any correct idea of their condition and solvency. The mere array of figures, showing a certain amount of assets in bills discounted, &c., is not, for the purpose of any serious examination, worth the paper on which it is written; a bank may have its portfolio bursting with promissory notes and other evidences of debt, and be utterly unable to meet the demands of its creditors; and the refusal to permit any inquiry into the character of their securities is not calculated to create confidence in their soundness. This remark, true in its application to all banks, applies with peculiar force to those of the District of Columbia; their bills or notes discounted form much the largest item of their assets. In large commercial cities they are generally based on real transactions, the exchange of credit for merchandise, and are, of course, almost invariably paid at maturity. Here, on the contrary, where there is little or no external commerce, except the export of flour and grain from Georgetown, a large proportion of the notes discounted is what is styled accommodation notes, or notes of persons borrowing money from the banks, with endorsements for *security*. This class of paper is always repudiated by banks doing *business on* legitimate principles, because the borrower generally

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requires additional time for the payment of his debt, and renewals become the rule instead of the exception. In all old institutions much of this sort of paper will be found; and when they are forced into liquidation, its worthlessness will generally prove to be in proportion to the remoteness of its origin. It may be assumed as a fact, justified by all the experience of the past, that the true condition of any joint stock bank that has been engaged in business for thirty or forty years can only be ascertained, even approximately, by winding it up. It is hoped that the result may prove more favorable with the District banks than with nearly all others which have gone through the same process. These banks, too, have profited in another way by their suspension of payment. It will appear by the annexed statement from the treasury that, instead of employing their specie for the payment of their debts, they have, from the 26th of September, 1857, until the 18th of January, 1858, exchanged $207,050 of coin for a like sum in transfer warrants, which they have, of course, sold for a considerable premium, or given at par to their favorites.

Your committee, after full deliberation, is unanimously of opinion that it is expedient to prohibit the issue of all notes for circulation by individuals or associations in the District of Columbia, not expressly authorized by law to make such issues, and to prevent the circulation of all bank notes issued out of the District of Columbia of a less denomination than fifty dollars, and have reported a bill accordingly.

The committee is also of opinion that it is inexpedient to authorize the establishment, either by general or special laws, of banks of issue within the District of Columbia, and report a resolution to that effect; but should the Senate think proper to instruct the committee to prepare and report a general law authorizing the establishment of banks of discount, deposit, and issue in the District of Columbia, it will endeavor to frame a bill, which, while conferring all proper privileges for such purposes, will, as far as possible, protect the community from their abuse.

The committee submit also the following resolution:

Resolved, That it is inexpedient to authorize the establishment, either by general or special laws, of banks of issue within the District of Columbia.

APPENDIX.

1. Circular, December 22, 1857.
2. Communication of W. Gunton, president of Bank of Washington, December 29, 1857.
3. Communication of John Purdy, president Patriotic Bank, December 31, 1857.
4. Statement of the condition of the affairs of the Patriotic Bank.
5. Communication of R. Read, president of the Farmers and Mechanics' Bank of Georgetown, January 2, 1858.
6. Statement of the affairs of the Farmers and Mechanics' Bank.

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7. Communication of Charles E. Rittenhouse, president Bank of Commerce, December 31, 1857.
8. General statement of the Bank of Commerce.
9. Communication of Thomas Carbery, president Bank of the Metropolis, January 5, 1858.
10. Statement of the affairs of the Bank of the Metropolis.
11. Communication to the president Bank of Washington, January 11, 1858.
12. Communication from W. Gunton, president Bank of Washington, January 12, 1858.
13. General statement Bank of Washington.
14. Weekly statement Bank of Washington.
15. Synoptical statement of District banks.
16. Communication from Secretary of the Treasury, January 4, 1858.
17. Communication from Levi Woodbury, Secretary of the Treasury, January 4, 1841, to W. A. Bradley, president Patriotic Bank.
18. Treasurer's memorandum of coin deposited by District banks for transfer warrants, from suspension of specie payments to January 18, 1858.

No. 1.

Circular addressed to the different banks of the District of Columbia, December 23, 1857.

SENATE CHAMBER,
December 22, 1857.

SIR: I have been instructed by the select committee of the Senate, appointed to examine the condition of the corporations or associations acting as banks of deposit, discount, and issue in the District of Columbia, to request that you will furnish, at as early a day as possible, a full statement of the affairs of the board of directors of the —— ——, detailing the assets and liabilities of the same, with a full and complete list of its debtors; of the amounts due by each; when their obligations were contracted, and when they mature; how the same are secured, and any other information which you may consider as proper and necessary to a just appreciation of the condition of its affairs.

Very respectfully, your obedient servant,

JOHN SLIDELL.

PRESIDENT OF BOARD OF TRUSTEES
Of Bank of Metropolis.

No. 2.

BANK OF WASHINGTON,
December 29, 1857.

SIR: I have the honor to acknowledge the receipt of your letter of the 23d instant, inclosing a resolution of the Senate of the United

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States, calling for certain information in regard to the banks of this District, and I this morning laid the same before the board of trustees. The subject was referred to a committee, and will receive due attention.

With great respect, your most obedient servant,

WM. GUNTON, *President.*

Hon. JOHN SLIDELL,
Chairman, &c., &c.

No. 3.

PATRIOTIC BANK OF WASHINGTON,
December 31, 1857.

GENTLEMEN: I have the honor to acknowledge the receipt of your letter of the 23d instant, communicating a copy of the resolution passed by the Senate on the 22d instant.

Your communication has been laid before the board of trustees, who have instructed me to transmit a statement of the affairs of the bank, prepared up to the 1st January, 1858, which it is hoped will be satisfactory to the committee.

I have been further instructed by the trustees to say, for the information of the committee, that this bank is not an incorporated institution, but a voluntary association of individuals, acting through a board of trustees appointed under a deed of trust duly executed and recorded in the clerk's office of the circuit court of United States for the District of Columbia.

Very respectfully, your obedient servant,

JOHN PURDY, *President.*

Hon. JOHN SLIDELL,
Chairman of Committee.

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No. 4.

Statement of the Patriotic Bank of Washington.

1858.			1858.		
January 1	Due from banks	$60,004 48	January 1	Due to banks	$66,809 45
	Due bank stock	20 00		Due to individuals	31,452 48
	Lands in Maryland and Pennsylvania	21,000 00		Due to special deposits	1,185 89
	Banking house	14,000 00		Notes in circulation	23,115 00
	House and lot in Washington	2,500 00		Capital stock	250,000 00
	Canal bonds	27,000 00			
	Patriotic Bank stock	126,105 00			
	Bills and notes in suit	4,536 32			
	Bills and notes discounted	85,893 15			
	Suits at law	116 75			
	Loss and profit account	10,768 47			
	Checks and notes of other banks	8,208 70			
	Specie	12,409 95			
		372,562 82			372,562 82

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No. 5.

FARMERS AND MECHANICS' BANK,
Georgetown, D. C., January 2, 1858.

SIR: In response to your communication of the 23d of December, I transmit herewith the cashier's last weekly statement, showing the condition of this bank on the 31st of December ultimo.

In regard to your request to be furnished with a list of the debtors of this bank, I am instructed by the board of trustees to say that they feel very reluctant to furnish such a statement to become a public document, which might thereby operate injuriously to such debtors; but they are willing that you, or the whole committee, if it will suit your convenience to do so, should call at the bank and examine all the accounts on our discount ledger.

Of the item of "bills and notes discounted," as shown by the cashier's statement, we consider $14,064 39 as debts lost to the bank; and, in consequence of recent commercial failures, we consider $26,500 of said bills and notes as in great danger of being lost.

To give the committee a more just estimate of the present value of the stock of the bank, it is proper to state that a committee of stockholders rigidly investigated the condition of the bank in July, 1849, and came to the conclusion that the capital stock then owned by shareholders, say $290,805, was only worth $197,947. Since then, by the recovery of debts deemed bad by the committee at that time, and gains upon real estate since that time disposed of, together with surplus profits, after paying dividends and expenses of the bank, that sum had been increased on the 31st of December, 1857, to $236,856 35. Should the $26,500, above referred to as "in great danger of being lost," be ultimately lost to the bank, it will reduce this last sum by that amount. The most of the $14,064 39, however, referred to as "lost," was excluded by the committee when they reported the capital stock as worth $197,947.

It may be proper to mention that several of the trustees are among the largest shareholders of the stock, and that the aggregate indebtedness of the board—nine in number—does not exceed $13,000.

I have the honor to be, very respectfully, yours, &c.,

R. READ,
President Farmers and Mechanics' Bank.

Hon. JOHN SLIDELL,
Chairman Select Committee, U. S. Senate.

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No. 6.—*Statement of the condition of the Farmers and Mechanics' Bank of Georgetown, D. C., December* 31, 1857.

Capital stock owned by stockholders, on which dividends are declared		$288,730 00	Bills and notes discounted		$349,962 29
Interest account		374 61	Real estate		26,388 45
Dividends due stockholders		12,088 36	Profit and loss		13,988 19
Bank notes of the Farmers and Mechanics' Bank in circulation	$47,350 00		Suspense account		17,068 58
Due other banks	30,183 51		Law account		398 61
Due depositors	127,264 14		Stock account		233 33
		204,797 65	Protest account		422 42
			Expense account		36 13
			Due from other banks	$29,199 48	
			Gold and silver	58,142 22	
			Notes of checks on other banks	10,150 92	
					97,492 62
		505,990 62			505,990 62

Silver in our vault	$7,837 50
Gold in our vault	50,304 72
Balance in New York, gold, embraced above, on amount due from banks	16,478 83
Amount of specie	74,621 05

I certify, on my honor, that the above statement, to the best of my knowledge and belief, represents the true condition of this bank.

W. LAIRD, Jr., *Cashier.*

FARMERS AND MECHANICS' BANK, *Georgetown, D. C., December* 31, 1857.



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No. 7.] BANK OF COMMERCE,
Georgetown, D. C., December 31, 1857.

SIR: The undersigned, president of the Bank of Commerce of Georgetown, has the honor to acknowledge the receipt of your letter of the 23d instant, addressed "to the president of the board of trustees of the Bank of Commerce of Georgetown," requesting "a full statement of the affairs of the board of trustees of the Bank of Commerce, detailing the assets and liabilities of the same, with a full and complete list of its debtors, the amount due by each, when their obligations were contracted, and when they mature; how the same are secured," &c.; and also inclosing a resolution of the Senate for your authority in the premises, adopted 22d instant.

It is evident, from the direction of this letter, that a misconception exists in the honorable committee of the Senate as to the origin and legal position of the Bank of Commerce, which may be easily removed by a brief explanation of the rise and establishment of that bank. Congress, by several acts, incorporated certain banks in this District, whose charters expired in July, 1844. The stockholders of these banks, at a public meeting held in June of that year, directed all their estate, real, personal, and mixed, to be conveyed to certain trustees upon certain trusts, uses, and purposes; and such deeds were duly made and recorded in the clerk's office of this District. The charters of such banks having expired in July, 1844, the trustees, it is said, were advised by the most eminent counsel that, as officers of such joint stock companies, they had full power to engage in the business of banking, and to issue paper money, discount notes, and receive deposits.

The trustees of these companies, having been thus fortified by the opinions of able lawyers, engaged in banking operations, and have continued in this business for upwards of thirteen years, and it may be inferred that their banking operations have been highly beneficial to the public. Certain individuals, to wit: Hugh B. Sweeney, Hamilton G. Fant, John L. Dufief, Richard Pettit, Mrs. Susan Ireland, Charles E. Rittenhouse, Samuel Fowler, William T. Herron, R. M. Boyer, and Timothy O'Neale, who are all residents of this District, and known to be large real estate owners, of abundant means, and who were entirely disconnected with the banks whose charters had thus expired, determined, in the absence of any banking law for this District, and at the solicitation of a large number of merchants, to appropriate a considerable part of their capital to the business of banking.

The population of the District having largely increased, and the current business of the two cities equally enlarged, these individuals, in the year 1852, formed a joint stock company, with a capital of one hundred thousand dollars, to carry on the banking business in Georgetown, and designated it the "Bank of Commerce of Georgetown." They were encouraged to undertake this business from the conviction that they would infringe no established public law, and from the belief that they had a right to appropriate their capital to the use of any legitimate object of business. The stockholders thus formed, the Bank of Commerce appointed a president and cashier, and controlled, revised, and supervised the acts of their officers at stated regular meetings, This company has been engaged since that year in banking opera-

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tions—that is to say, in receiving deposits, discounting notes, and issuing bills for a limited circulation.

The first was clearly legal, as a deposit is only an agreement between parties, the depositor having a right to give his money to any individual to keep and control, and the depositee or bailee having the same right to receive the money. The right to discount is just as clear. A discount is but a loan, and all the public law enjoins is that no usury shall enter into the contract. And here it may be respectfully suggested that as a deposit and a loan not usurious are thus legal and harmless, no government, however despotic, much less free, has ever abridged or denied the rights of its citizens thus to contract in these simple forms.

The parties, then, to such innocent and legal operations should not be exposed to public view, it being the undoubted understanding of our customers that, as they have a right to borrow, and the transactions being legal and innocent, they ought not to be made accountable for any such engagements, either by a public exhibition of their names or a searching scrutiny into their ability to pay. This suggestion is confirmed by the reflection that it is a private partnership, and only responsible to the judicial tribunals of the country for the propriety of its past operations, similar to other partnerships, and to be governed by the same laws.

The right to issue paper money was not restrained by any public law or act of Congress when this bank was established; and as such issues were then, and still are, legal, it is very clear that the stockholders and officers of this bank cannot be subjected to any penalty, or are amenable to other than the courts, for the exercise of an undoubted right.

That Congress has the right to enact any laws for the *future* concerning the currency of this District is beyond dispute, and the stockholders of this bank will be among the first to acquiesce in such legislation.

Confidently believing that they have transgressed no law, and that the courts are open to their customers for any imputed wrong, they cheerfully submit herewith to the consideration of the honorable committee such a statement of their condition as comports with a strict regard to the feelings, rights, and interests of others. That the bank has been of some considerable advantage to the mercantile community may be inferred from the fact that, during the period of its existence, about six years, it has discounted over *four million dollars*.

The circulation of the bank, which constitutes the only possible objection to it, so far as the public is concerned, never was any great object, averaging less than thirty thousand dollars.

Having referred for their authority to the general law, which gave them full power to engage in this business, and cheerfully rendering a statement of the affairs of the company, the undersigned believes that it fully complies with the object proposed by the letter of the committee.

I have the honor to be, very respectfully, your obedient servant,

C. E. RITTENHOUSE, *President*.

Hon. JOHN SLIDELL,
Chairman of the Select Committee, &c., U. S. Senate.

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No. 8.

General statement of the Bank of Commerce, Georgetown, D. C., January 2, 1858.

Bills and notes discounted	$111,899 58	Capital paid in	$106,000 00
Stock account	13,649 80	Circulation	28,995 00
Real estate	13,314 36	Certificates of deposit	2,500 00
Due from other banks	29,698 06	Depositors	52,882 46
Sundry accounts, viz: costs of suits, expense, protest, profit and loss, and suspense accounts	4,619 01	Due to other banks	499 21
Notes of other banks	5,523 00	Exchange account	1,402 32
Checks on other banks	386 09	Surplus account	15,099 26
Specie	28,288 35		
	207,378 25		207,378 25

C. E. RITTENHOUSE, *President.*

BANK OF COMMERCE, *Georgetown, D. C., January 2, 1858.*

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No. 9.] BANK OF THE METROPOLIS,
Washington, January 5, 1858.

SIR: I herewith inclose to you a statement of the condition of the Bank of the Metropolis, detailing the assets and liabilities of the institution, as requested in your letter of the 23d ultimo, which, I trust, will be satisfactory to the committee of the Senate. We do not feel authorized to furnish you with a list of our debtors, the amount due by each, &c., &c. By such an exposure we should be likely to lose all our customers, and might be made accountable to them in suits for damages. I am, however, authorized by the president, the cashier, and the trustees, to assure the committee that not one of them owes the bank a dollar, and this I know to be true.* They are all gentlemen in easy circumstances, and seldom have occasion to borrow money from this or any other bank—certainly not beyond their ability to pay on demand.

The charter of this bank expired on the 4th of July, 1844. Before the expiration of the charter, July 3, 1844, the whole property and effects of the bank were sold and transferred to trustees elected by the stockholders. By this sale and conveyance, executed in legal form, the Bank of the Metropolis became a private institution, and as such it has been carried on ever since, with the full knowledge that every stockholder is bound for the liabilities of the bank. I think I can say with truth that the bank has had as much of the confidence of the public since the charter expired as it ever had before, and that it has been as useful to the community, in all respects, as it ever was before that time. The bank is safely and justly conducted, and every accommodation is afforded to the public consistent with prudence. No wild speculations are here carried on. No purchases or sales of stocks, lands, or property of any kind. Nothing but a fair and legitimate system of banking is carried on, or permitted to enter into our business operations. The bank has a high and honorable standing, not only in this community, but widespread throughout the country, and I trust that it will continue to be so conducted as to maintain its character for punctuality and usefulness.

This bank suspended specie payments on the 28th of September last, after many of the banks east of us had ceased to pay coin. Although we paid out, the day before the suspension, near seventy thousand dollars in gold and silver, we had still a large amount of specie on hand, and were in a very sound and healthy condition; but the interest of the merchants and other business portion of the District required a suspension. We concluded that it was best, and yielded to public opinion. Many of our depositors advised and urged it upon us, as best for the bank and for the community. Our notes in circulation were only $49,500, whilst our gold and silver, and other specie funds, amounted to $370,078 65. Since the suspension, we have freely paid out gold and silver to depositors and note-holders, for all market and other necessary purposes, to the amount of $164,266 82; whilst there has been paid into the bank, in gold and silver, during the same period,

*One of the trustees, a very rich man, with two other rich men, are joint drawers on a note for $6,000, procured for one of the churches in Washington, which note is now about to be paid.

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$223,612 05. Since this unavoidable calamity fell upon the bank, I have not heard a single complaint, either among the depositors or the holders of our notes, and I am sure there has been no just cause for complaint.

These misfortunes will sometimes overtake banks, merchants, and even governments, and no human foresight can prevent it. The present crisis, like the cholera, seems to be traveling all over the world, and prostrating in its course the most wealthy men and the most stable and popular institutions. The city of Hamburg, remarkable for its wealth, and trading alone with specie, was in the range of this financial tornado, and many of her richest merchants have been stricken down and ruined by it. I do not doubt that if every bank in the United States was discontinued a similar crisis would occur every ten or twenty years; but the people of this country are too enterprising to be tied down to paying the cash for everything they buy or everything they want. In truth, there is not specie enough in the world to carry on the business of this country. If our bank is not safe and useful to the community, none can be made so; for it is guarded, watched, and protected to the best of our skill and judgment, and as much with the view of serving the public as of promoting the interest of the stockholders.

In carrying on our bank, as a private institution, we have not violated any law or rule of propriety. We considered that we had as much right to carry on the bank, as we conduct it, as any merchant in Washington to carry on his business. Those who make deposits and deal with us find their own interest in it. The only inducement we offer to them is the regular and systematic manner in which we conduct our bank, and the facilities we afford them in carrying on their business.

I beg that the committee will excuse me for mentioning some of the services which this bank has rendered to the government when the treasury had no funds. In 1814 Col. Monroe, then Secretary of War, was sent to the Bank of the Metropolis by Mr. Madison to procure a loan of two hundred thousand dollars, to be forwarded to General Jackson, then at New Orleans, who was out of supplies for his army, and could not do without it. The loan was made and immediately transmitted to the General. Several times since that period the bank furnished specie funds to pay the members of Congress, mail contractors, &c., without interest or compensation of any kind, when the government could not otherwise procure it in time to meet the demand. This bank was for sometime the depository of the public moneys, and afforded many facilities in the transmission of funds to different parts of the country, at our own expense and risk. For some years we paid the pensioners at this place without any compensation whatever.

If the committee desire any further information in relation to the bank, we shall be pleased to furnish everything that can be useful.

I have the honor to be, very respectfully, sir, your most obedient servant,

THOS. CARBERY, *President.*

Hon. JOHN SLIDELL, *Chairman, &c., &c.*

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No. 10.

DR. *State of the Bank of the Metropolis on the 31st of December, 1857, inclusive.* CR.

Bills and notes discounted, viz:			Capital paid in		$355,300 00
On personal security	$393,761 85		Notes in circulation		124,414 76
On domestic bills	64,488 27		Due to other banks		38,658 36
On stocks	59,315 00		Profit and loss account		21,986 99
On stocks on call	54,918 49		Unclaimed dividends	$14,869 57	
		$572,483 61	Depositors	316,573 96	
Stock of the bank	41 66				331,443 53
Other stocks	4,074 66				
		4,116 32			
Real estate taken for debt	4,500 00				
Do.....banking-house	22,375 90				
		26,875 90			
Due from other banks	29,953 21				
Notes and checks of other banks	96,896 37				
		126,849 58			
Protest and costs of suits, accounts		8,360 79			
Suspense account		2,653 10			
Specie		130,464 34			
		871,803 64			871,803 64

R. SMITH, *Cashier.*

BANK OF THE METROPOLIS, *Washington, January 5, 1858.*

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No. 11.

SENATE CHAMBER, *December* 12, 1857.

SIR: I have received your letter of December 29, acknowledging receipt of mine of December 23, calling for information of the condition and affairs of the trustees of the Bank of Washington, in which letter you say that the subject was referred to a committee of the board of trustees. I am instructed by the special committee to inquire if it be the intention of the board of trustees to give the information asked for in my letter of December 23. An immediate reply to this letter is requested.

Very respectfully,

JOHN SLIDELL,
Chairman Special Committee, &c.

W. GUNTON, Esq.,
Board of Trustees of Bank of Washington,
or, in his absence, Cashier of said Board.

No. 12.

BANK OF WASHINGTON, *January* 12, 1858.

SIR: By direction of the board of trustees of this bank, I have the honor to inclose herewith a statement showing the condition of this bank on the 1st day of January, 1858.

The board do not feel at liberty, in view of the relation existing between the bank and its debtors, to furnish in detail "a list of its debtors, the amount due by each, when their obligations were contracted, and when they mature," considering that this would be in direct violation of the confidential nature of their transactions with the bank. Besides, it is thought that the statement herewith sent will exhibit the information "necessary to a just appreciation of the affairs of the bank."

In the year 1844, just previous to the expiration of the charter of the bank, the stockholders, in general meeting, placed in the hands of trustees all their assets, rights, and credits, for certain purposes, and among them the power to continue such banking acts and operations as they might legally do and perform. Under the authority thus conveyed, and the joint resolution passed by Congress about the same time, giving authority to wind up the affairs of the old bank, the trustees have been ever since acting in good faith, and have conducted their business, as they believe, acceptably to the citizens of Washington, and satisfactory to their customers generally. It is true they have been obliged to succumb to this panic, which has spread so disastrously over the whole commercial world; but as this bank is a private association, all its stockholders are liable, both to depositors and noteholders, so that there is no probability of loss occurring to either.

Under this unlooked for state of things the trustees determined to make no *new loans*, but urgently to call upon all its debtors for such

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curtails as they could pay without making any *sacrifices* to do so. This was done by most of them, and every note on which a renewal was asked, on the payment of a curtail, however small, was assented to. Had the trustees insisted on the payment of the notes as they became due, great inconvenience and losses to the business men would have been the inevitable result; but it is now believed that this bank will not lose a dollar on its discounted paper in consequence of this untoward pressure. Owing to the large amount of specie monthly disbursed by the government in this city, the circulation of the District banks have of late years been merely nominal, the chief currency being gold and silver and notes of banks below par, the latter not being received as bankable funds.

The circulation is larger now, in consequence of specie being at a premium, and because the trustees were solicited by merchants and business men to increase their issues, and thereby keep other notes, of doubtful value, from being introduced.

This communication would have been transmitted before but from unforeseen circumstances. As the last weekly statement has been prepared for the board, I send a copy for your inspection.

With great respect, your most obedient servant,

W. GUNTON, *President.*

Hon. JOHN SLIDELL,
Chairman, &c., United States Senate.

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No. 13.—*General statement of the Bank of Washington, January* 1, 1858.

Capital stock outstanding		$178,160 00	State and other stocks and bonds		$55,262 42
Notes in circulation		92,052 50	Banking-house		23,827 70
Individual deposits		207,427 10	Other city lots, assessed value		40,756 99
Due to banks		13,292 15	Legal expenses		3,620 72
Suspense account		767 73	Protest account		139 13
Profit and loss		34,600 97	Bills and notes in suit	$31,454 94	
			Bills and notes current	243,798 25	
					274,253 19
			Due by banks	14,812 15	
			Specie	81,341 63	
			Notes of District banks	10,950 00	
			Notes of other banks	7,638 00	
			Checks on other banks	13,705 52	
					128,447 30
		526,300 45			526,300 45

JAS. ADAMS, *Cashier*

BANK OF WASHINGTON, *January* 12, 1858.

No. 14.—*Weekly statement of the Bank of Washington, January* 9, 1858.

Due to banks	$11,233 18	Due from banks		$11,009 15
Due to depositors	230,786 48	Specie		102,625 76
Due to circulation	89,287 50	District notes and checks		22,379 98
		Notes on other banks		8,645 00
	331,307 16			144,659 89
		Current bills and notes		245,901 91

JAS ADAMS, *Cashier.*

BANK OF WASHINGTON, *January* 12, 1858.

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No. 15.—*A synoptical statement of the condition of the affairs of the banks of the District of Columbia.*

LIABILITIES.

	Capital.	Circulation.	Individual deposits.	Due to banks.	Dividends undivided.	Surplus, &c.	Total.
Bank of the Metropolis	$355,300 00	$124,416 76	$316,573 96	$38,658 36	$14,869 57	$21,986 99	$871,803 64
Bank of Washington	178,160 00	92,052 50	207,427 10	13,292 15	....	Suspense, 767 73	526,300 45
						Surp's, 34,600 97	
Patriotic Bank.....$250,000	.....	.....	31,452 48	66,809 45	....	....	246,457 82
Less this am't held by bank, 126,105	123,895 00	23,115 00	Special, 1,185 89				
Farmers and Mechanics' Bank	288,730 00	47,350 00	127,264 14	30,183 51	12,088 36	....	505,616 00
Bank of Commerce	106,000 00	28,995 00	55,382 46	499 21	....	16,501 58	207,378 25
	1,052,085 00	315,929 26	639,286 03	149,442 68	26,957 93	73,857 27	2,357,556 17

ASSETS.

	Bills discounted, and loans.	Specie.	Stocks.	Real estate.	Due by banks.	Notes and checks of other b'ks.	Protest, loss, ex-pense, &c.	Deficiency, &c.	Total.
Bank of the Metropolis	$572,483 61	$130,464 34	4,116 32	B. H., $22,375 90	$29,953 21	$96,896 37	$8,360 79	$2,653 10	$871,803 64
	....	....	.....Taken	for debt, 4,500 00					
Bank of Washington	In suit, 31,454 94	81,341 63	55,262 42	B. H., 23,827 70	14,812 15	32,293 52	3,752 85	.....	526,300 45
	Current, 242,798 25	....	.....Taken	for debt, 40,756 99					
Patriotic Bank	85,893 15	12,409 95	27,020 00	B. H., 14,000 00	60,004 48	8,208 70	116 75	10,768 47	246,457 82
	In suit, 4,536 32	....	....	Other, 23,500 00					
Farmers and Mechanics' Bk.	349,962 29	58,142 22	233 33	26,388 45	29,199 48	10,150 92	821 03	30,718 29	505,616 01
Bank of Commerce	111,899 58	28,288 35	13,649 80	13,314 36	29,698 06	5,909 09	4,619 01	.....	207,378 25
	1,399,028 14	310,646 49	100,281 87	168,663 40	163,667 38	153,458 60	17,670 43	44,139 86	2,357,556 17

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No. 16.

TREASURY DEPARTMENT, *January* 4, 1858.

SIR: Agreeably to your request, I have the honor to inclose herewith, from the records of this department, a copy of a letter addressed to Wm. A. Bradley, esq., president of the Patriotic Bank, Washington, by the Secretary of the Treasury, dated 4th January, 1841, with the statement from the same record that similar letters were addressed to the other banks of this District as therein stated.

The original communications from those banks referred to have not been found on the files of the department.

Very respectfully, your obedient servant,

HOWELL COBB, *Secretary of the Treasury.*

Hon. JOHN SLIDELL, *Senate of the United States.*

No. 17.

TREASURY DEPARTMENT, *January* 4, 1841.

SIR: I have to acknowledge the receipt of your letter of the 31st ultimo, inclosing a list of stockholders and the certificate of the president and directors of the Patriotic Bank of Washington, assenting to and accepting the extension of the charter of the said bank upon the terms and conditions contained in the act of Congress of the 3d of July, 1840, which certificate was duly filed in my office on the 31st day of December ultimo, in conformity with the requirements of the said act.

I am, &c., LEVI WOODBURY,
Secretary of the Treasury.

W. A. BRADLEY, Esq.,
President of the Patriotic Bank of Washington.

Similar letters were addressed to the presidents of the following banks of the District, and the dates of the filing of their several certificates noted, as follows:

Bank of the Metropolis, of Washington, certificate filed December 31, 1840.

Bank of Washington, of Washington, certificate filed January 2, 1841.

Farmers' Bank of Alexandria, of Alexandria, D. C., certificate filed January 2, 1841.

Farmers and Mechanics' Bank of Georgetown, D. C., certificate filed January 2, 1841.

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No. 18.

TREASURY OF THE UNITED STATES,
January 18, 1858.

SIR: In answer to your call of 16th instant, I have the honor to report the following receipts of coin for transfer drafts, viz:

From Richard Smith, cashier Bank of Metropolis	$114,550
From James Adams, cashier Bank of Washington	70,000
From C. Bestor, cashier Patriotic Bank	1,500
From W. Laird, jr., cashier Farmers and Mechanics' Bank, Georgetown	20,000
From C. E. Rittenhouse, president Bank of Commerce, Georgetown	1,000
Since September 26, 1857	207,050

Very respectfully, your obedient servant,

SAMUEL CASEY,
Treasurer United States.

P. CLAYTON,
Assistant Secretary of the Treasury.

For reasons stated in their report, the investigation into the condition of the banks severally was not as searching as the committee would have desired to make it; but as those reasons still exist, and the condition of the banks (the resumption by them of specie payments excepted) is supposed since to have undergone no material change, your committee adopt the said report, and recommend the passage of the bill referred to them.

They also submit the following resolution:

Resolved, That it is inexpedient to authorize the establishment, either by general or special laws, of banks of issue in the District of Columbia.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 18, 1860.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 89.]

The Committee on Naval Affairs, to whom was referred the memorial of William D. Moseley, asking relief from a contract to furnish live-oak for a sloop-of-war, which he assumed as surety, have had the same under consideration, and report:

That Harrison R. Blanchard contracted with the United States on the 25th September, 1855, to deliver at the navy yard, New York, on or before the 1st October, 1856, live-oak for naval purposes, described in the contract as follows: "30,000 cubic feet of live-oak timber, viz: 3,600 feet of principal pieces, at $1 75 per cubic foot; 20,400 feet of moulded timber, at $1 30; and 6,000 feet of promiscuous pieces, at $1 per cubic foot, amounting in all to $38,820." For the performance of this contract the memorialist, together with Mr. A. Williams, was joint surety in the sum of $70,000; and upon the failure of the contractor to perform it, the memorialist took an absolute assignment of the contract from him, as his affidavit shows, and at once entered upon its performance in good faith.

Upon referring to the scale of offers accompanying the report of the Secretary of the Navy of the 1st of December, 1856, it will be perceived that Mr. Blanchard's offer was $8,580 lower than the next highest bidder. By the terms of the contract the timber was to be cut within thirty miles of the sea; and the memorialist states, what is also known to the committee, that Indian hostilities existed in this country, and he alleges that he was thereby prevented from executing it. He, however, furnished a large portion of the timber, and the Navy Department contracted with a new party for supplying the remainder, at prices exceeding those allowed to Blanchard, viz: for 2,800 cubic feet of principal pieces at $2 per foot, and 13,000 feet of moulded timber at $1 50 per foot, amounting in all to $25,100, being an excess of $3,300 over Mr. Blanchard's contract.

From the copy of the letter hereunto annexed, addressed to the honorable Secretary of the Navy by the chief of the Bureau of Construction, Equipment and Repair, and communicated to your committee, upon their application to the Navy Department for information,

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it appears that "there has been paid to Mr. Blanchard on his contract the sum of $13,979 35, and the reservation in the hands of the government amounts to $2,466 94."

Your committee find that the memorialist contracted to deliver this timber at unusually low rates, and that he entered upon the performance of his contract in good faith, and probably would have completed it but for Indian hostilities; "that if the contract be closed," and the reservation of $2,466 94, retained by the United States, be paid to the memorialist, "the average of the whole contract will then be at a low rate, and the entire frame, under the two contracts, will have been delivered for $41,546 29, which, in my opinion, (the bureau,) is on advantageous terms to the government; that the United States having therefore lost nothing, but having actually obtained this timber upon advantageous terms, your committee deem the memorialist entitled to relief, and report a bill accordingly.

NAVY DEPARTMENT,
Bureau of Construction, Equipment, &c., Feb. 17, 1858.

SIR: In compliance with your instructions endorsed on the letter of the chairman of the Naval Committee of the Senate to the department, of the date of 4th February, I would respectfully state that, on the 25th September, 1855, a contract was made with Mr. Blanchard for the delivery at the New York yard, on or before the 1st October, 1856, of 30,000 cubic feet of live-oak timber, viz: 3,600 feet of principal pieces, at $1 75 per cubic foot; 20,400 feet of moulded timber, at $1 30, and 6,000 feet of promiscuous pieces, at $1 per cubic foot, amounting in all to $38,820.

Upon referring to the scale of offers accompanying the report of the Secretary of the Navy, of the 1st December, 1856, it will be perceived that Mr. Blanchard's offer was $8,580 lower than the next highest bidder.

The contract was not completed within the time specified, for the reason, as then stated by the contractor or his surety to the department, that they were prevented by the hostile Indians; but the government has suffered no loss thereby, and the timber has not been wanted for use.

It being understood that the contract could not be fulfilled, on the 4th August, 1857, a letter was addressed by this bureau to Mr. Moseley, one of the sureties, to ascertain certainly the intention of the contractor, so that proper steps might be taken to complete the contract.

Mr. Moseley replied, on the 1st September, 1857, that he was unable to complete it, and at the same time expressed his readiness to send forward all the timber he then had cut conforming to the contract, that it might be taken. This showed a willingness on his part to fulfil his engagement as far as lay in his power, and it was placing further security in the hands of the government. A portion of this timber was delivered, and the whole would have been, it appears, as is stated in the memorial, but the vessel engaged refused to take it on account of its size.

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On the 17th November, 1857, a contract was made with other parties to complete the contract of Mr. Blanchard, viz: for $2,800 cubic feet of principal pieces at $2 per foot, and 13,000 feet of moulded timber at $1 50 per foot, amounting in all to $25,100, being an excess of $3,300 over Mr. Blanchard's contract. If the actual measurement proves to be less than the estimated quantity, which it probably will, the excess will not be so much.

There has been paid to Mr. Blanchard on his contract the sum of $13,979 35, and the reservation in the hands of the government amounts to $2,466 94. If the contract is closed and the reservation paid, the average of the whole will then be at a low rate, and the entire frame, under the two contracts, will have been delivered for $41,546 29, which, in my opinion, is on advantageous terms to the government.

With respect to the 2,000 cubic feet which Mr. Moseley says he will have on his hands, of principal pieces or moulded timber, or that will make such, and it proves to be suitable and satisfactory, it might without detriment be taken at not exceeding his contract rates.

The papers are herewith respectfully returned.

Respectfully, your obedient servant,

JOHN LENTHALL,
Chief of the Bureau.

Hon. ISAAC TOUCEY,
Secretary of the Navy.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1860.—Ordered to be printed.

Mr. CHANDLER made the following

REPORT.

[To accompany Bill S. 80.]

The Committee on Commerce, to whom was referred the petition of Jeremiah Moors, with a bill accompanying the same, having examined the same, report:

That they adopt the report of the committee made January 25, 1855, in the following words:

"That on August 30, 1831, Henry T. Blake contracted with Adam D. Stuart, an agent of the United States, to build a light-house on the outer Thunder Bay island, in Lake Huron; that on the same day that this contract bears date Mr. Blake assigned it to the memorialist, constituting him his agent to perform the contract, and to receive the pay of the government therefor, and he was accepted by the government agent to do the work, as the substitute of Mr. Blake, the original contractor; that he proceeded with the government agent to the place of location, and commenced the work upon the site selected by said government agent, prosecuted the same with skill and energy, in strict conformity to the contract, and to the entire satisfaction of the superintendent, until it was nearly completed—only a small amount of labor to be performed upon the lantern—when a gale of unusual violence arose, and a tremendous sea swept over several acres of that part of the island on which the light-house was located, beating against it with great force, and after withstanding the gale for some time it gave way, and fell into the lake, leaving about twenty feet on the land side standing, a perfectly sound wall.

"From all the evidence presented to the committee in this case, they are of opinion that the destruction of the tower was wholly attributable to the injudicious and exposed location of the building, and to the severity of the storms, (for which the memorialist was not responsible,) and *not* to any defect in the materials or workmanship of the building; and it was no fault of the contractor that it was not entirely finished, for he was directed to place it where it could not stand, and where he was not able to finish the lantern before the tower fell.

"It is evident that the site was selected in good faith by the govern-

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ment agent, he being entirely ignorant of the great rise of water during the furious storms that beat upon it. It is evident that the site was an unwise and injudicious one, from the fact that the government selected a site for the new light-house further from the water and upon higher ground. The second light-house was built by the memorialist, and out of the same materials, and stands firm to the present time.

"The memorialist did not undertake to guaranty the suitableness of the site, but to furnish the labor and materials for the structure, and for its failure the government is alone responsible; and the committee know of no rule of law or justice which would allow the government to shelter itself from the payment of a just compensation for the labor performed, because its agent had selected an unsuitable site for the building."

In view of the facts presented, the committee have come to the conclusion that the memorialist is entitled to compensation for the mortar used and labor performed in building the first light-house, and recommend the passage of the bill submitted to the committee.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 97.]

The Committee on Private Land Claims, to whom was referred the report of the Attorney General of the United States, (Ex. Doc. No. 30,) dated on the 17th February, 1859, submits the following report:

The government of the United States is in possession and claims as owner six lots called "fifty-vara lots," conveyed to the government by quit-claim deed, executed in its favor by the city of San Francisco on the 11th December, 1852. These lots extend from Harrison street to the waters of the harbor, between Front or Main street and Spear street, and the government has erected a marine hospital near the front, on Harrison street, and has inclosed the whole of the six lots for the use of the hospital.

A claim is now made to the two lots Nos. 5 and 6, which are the water-front lots, lying at a distance of about sixty yards from the rear of the hospital building, which claim is based on two deeds executed by the sheriff of the county of San Francisco on the 23d October, 1851, wherein it is stated that, by virtue of an *alias* execution issued from the district court of the fourth judicial district of California, under a judgment rendered in said court, at the suit of Samuel A. Morrison *vs.* The City of San Francisco, the said sheriff had seized and sold, on the said 23d October, 1851, said lot No. 5 to J. G. Ames and S. W. Holladay for the price of one hundred and fifty dollars, and the said lot No. 6 to James Blair for seven hundred and ten dollars; and the heirs and assigns of the vendees under said sheriff's deeds now call on the government to purchase their title to said lots Nos. 5 and 6, or to surrender their possession thereof.

When this claim was referred to your committee, at the first session of the thirty-fifth Congress, it was reported back without any recommendation, but with resolutions intended to elicit from the law officers of the government the information necessary to enable Congress to act with due regard to the rights of the government and the just claims

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of the petitioners.—(See *Senate Journal*, 1*st Sess.* 35*th Cong.*, *pp.* 295, 296.)

By these resolutions the Attorney General was directed "to make careful examination of the nature and validity of the title conveyed to the United States by the city of San Francisco on the 11th December, 1852, and to report to the Senate—

First. Whether any and what defects exist in said title.

Second. Whether the parties to whom lots five and six in the hospital square of San Francisco were conveyed by sheriff's deeds in 1851 have valid title to said lots under said conveyances, and are competent now to transfer valid title to the United States.

Third. What is the present value of said lots five and six, and whether the said lots are indispensable for the use of the hospital.

Fourth. Whether there are any outstanding claims of title to any other part of said hospital square.

Fifth. Where the claimants of said lots resided; or whether they had notice of the purchase by the government, and knew of the erection of the hospital, or made objection thereto.

The Attorney General made his response to these questions by his report of the 18th February, 1859; and the information by him communicated is quite unsatisfactory, and insufficient to justify any final action by the government on the claims of the petitioners. The whole matter was referred by that officer to the district attorney of San Francisco—there being nothing in Washington on which the Attorney General could act in person—and the report of the district attorney fails to give information on the points most essential for enabling Congress to devise proper legislation on the subject-matter of the claim.

On the second point of inquiry, "whether the parties claiming said lots five and six, under the sheriff's deed, have valid title to said lots under said conveyances," no opinion is given.

On the third point, as to the value of the lots, no opinion is given by the district attorney, but statements are furnished of the valuations made by different persons, exhibiting a range of estimates from $7,000 to $30,000 as the value of the two lots; and a communication has been submitted to the committee, from one of the owners, refusing to take less than the highest estimate, viz: $30,000, or $15,000 per lot. The collector of San Francisco declares that, in his judgment, they are worth not more than $3,500 per lot.

It appears further, by answer to another branch of the same question, that the lots are not indispensable for the use of the hospital, although convenient and useful.

Under these circumstances your committee cannot recommend the purchase of the property nor its abandonment to the petitioners. But it is evidently inconsistent with a due regard to justice that the government should retain the property by virtue of its sovereign power, and refuse any relief whatever. The petitioners *may* have a good title, notwithstanding the failure of the district attorney to report his opinion, or to give all the facts necessary to enable the Attorney General to form an opinion for the guidance of Congress. Your committee believe that the only safe and proper course is to authorize the petitioners to

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institute a suit against the government, asserting their title to the lots claimed by them; and in the event of their making good their claim by the final judgment of the court, authorizing their entry into possession of said lots, the same not being indispensable for public purposes.

They report a bill for that purpose.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1860.—Ordered to be printed.

Mr. GRIMES made the following

REPORT.

[To accompany Bill S. 96.]

The Committee on Pensions, to whom were referred the petition and papers relating to the claim of Abner Merrill, an invalid pensioner, for an increase of pension, beg leave to report:

That the committee refer to report No. 246, 1st session of the 25th Congress, upon the same petition, and recommend the passage of the same bill for the relief of the petitioner which was passed by the Senate on the 21st of May, 1858.

They accordingly report a bill.

IN THE SENATE OF THE UNITED STATES.

MAY 12, 1858.—Ordered to be printed.

Mr. THOMSON, of New Jersey, submitted the following report, to accompany bill S. 335:

The Committee on Pensions, to whom were referred the papers relative to the claim of Abner Merrill for increase of pension, beg leave to report:

That the said Abner Merrill was placed upon the pension roll on the first day of January, 1832, at the rate of four dollars per month, on account of partial disability, resulting from sickness and exposure while in the line of his duty as a soldier in the war of 1812.

They also find, by the certificates of two physicians, viz: A. T. W. Stevens, M. D., and Benjamin F. Green, M. D., proven by the testimony of Hon. H. Hamlin, of the United States Senate, and others, to be in respectable professional standing, that the disability under which Mr. Merrill had labored has now become *total*.

The committee therefore are of the opinion that he is entitled to full pension, and accordingly report a bill for that purpose.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mary Everts, only surviving child of Gideon Brownson, deceased, an officer of the revolution, and Canada Brownson, his widow, deceased, have had the same under consideration, and submit the following report:

That the claim for pension is based under the act of May 15, 1828; and to be entitled under that act the person who rendered the service must have survived its passage. Gideon Brownson died in October, 1796, and his widow in June, 1818; consequently they were never entitled to a pension, and the heirs have no claim.

And further: by a decision of the present Attorney General, children of revolutionary officers or soldiers are not entitled to pensions for the services of their fathers in any case.

The committee therefore ask leave to report back the papers to the Senate, and that they be discharged from further consideration of the subject.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1860.—Ordered to be printed.

Mr. SAULSBURY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of William Allen, a pensioner of the State of Maine, praying to be allowed arrears of pension, beg leave to report:

That they find the petitioner was granted a pension of five dollars per month from the 1st of January, 1839, by a special act of March 1, 1843, and on the 1st of June, 1858, his pension was increased one dollar per month, commencing at the date of his first allowance. He now asks for a pension from the year 1808, alleging that his disability commenced at that period.

The committee are not willing in such cases to recommend any variation from the law of February 4, 1822, which prescribes that invalid pensions shall commence only from the completion of the proof; nor can they discover in the case of this petitioner any good reason for a departure from that law.

They therefore recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1860.—Ordered to be printed.

Mr. SAULSBURY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of John Pickell, late a lieutenant in the United States army, praying a pension from the date of his resignation, August 5, 1838, *to the time he was placed upon the pension rolls, (November* 1, 1857,) *beg leave to report:*

That under a special act, approved March 2, 1859, the petitioner was granted a pension at the rate of $17 per month—the amount fixed by law for his rank (1st lieutenant) and his disability, commencing on the 1st November, 1857, the date of the completion of his testimony.

His prayer for pension for the period anterior to the completion of his proofs before the committee is opposed to the provisions of the general statute in such cases, and to the uniform practice of the Pension Office and of your committee.

The committee therefore recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT:

(To accompany bill S. 49.)

The Committee on Private Land Claims, to whom was referred the petition of the heirs and legal representatives of Thomas Maddin, deceased, praying confirmation of a certain land claim, beg leave to report:

That, on the 17th December, 1799, Thomas Maddin petitioned Charles D. Delassus, lieutenant governor of Upper Louisiana, for a grant of eight hundred arpents of land on the river Joachim, in the district of St. Genevieve; that, on the 30th of December, 1799, the lieutenant governor ordered the surveyor general to put the petitioner in possession of the land and make report of his survey thereof, "so that it may serve to solicit the concession from the intendant general of these provinces, *to whom alone belongs, by royal order, the distribution and concession of all classes of royal lands.*"

Nothing further appears to have been done by the petitioner prior to the treaty of cession by which Louisiana was transferred to the United States on the 30th of April, 1803.

On the 7th September, 1803, Antonio Souland, the special surveyor for Upper Louisiana, to whom the lieutenant governor's order of 30th December, 1799, had been issued, signed a certificate stating that on *the 20th July, of the preceding year*, he had surveyed the land by virtue of the above order. Under the act of Congress of 2d March, 1805, the petitioner presented this claim for confirmation to the commissioners, and it was twice rejected, viz: on the 23d June, 1806, and on the 23d August, 1810.—(See American State Papers, Public Lands, vol. 2, p. 463.)

On the 13th June, 1812, Congress passed a law "making further provision for settling the claims to land in the Territory of Missouri," (1st Land Laws, p. 216,) by the third section of which it is provided "that every claim to a donation of lands in said Territory, in virtue of settlement and cultivation, which is embraced by the report of the commissioners transmitted to the Secretary of the Treasury, and which, by the said report, shall appear not to have been confirmed, (1st,) merely because permission by the proper Spanish officer to settle has not been duly proven, or (2d) because the tract claimed, although inhabited, was not cultivated on the 20th December, 1803, or (3d) not to have been

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confirmed on account of both said causes; the same shall be confirmed, in case it shall appear that the tract so claimed was *inhabited* by the claimant or some one for his use prior to the 20th December, 1803, as aforesaid, and *cultivated in eight months thereafter.*"

By the 4th and 8th sections of the law, the recorder of land titles was directed to make report of his action to the Commissioner of the General Land Office, by whom the report was to be laid before Congress. The reports were accordingly made on the 1st November, 1815, and 2d February, 1816.—(See 3d vol. Pub. Lands, pp. 274 to 330.)

The reports thus made were confirmed by act of April 29, 1816.—(1 Land Laws, p. 280.)

By reference to the above reports of the commissioners, it will be seen that the petitioner's claims was first rejected on the 23d June, 1806, as "unsupported by actual inhabitation and cultivation," and that "the board require further proof of the date of said concession;" and on the 20th August, 1810, the board reported in unqualified terms that "the claim ought not to be granted." And on this report the claim was not one which the recorder of land titles was authorized to report for confirmation under the act of 13th June, 1812, because that act authorized the confirmation *only where there had been habitation prior to the 20th December*, 1803, followed by *cultivation* within eight months thereafter; nor could he recommend the confirmation under the second section of the act of April 12, 1814, (1 Land Laws, 243,) because that section only authorized confirmation where claims had been previously rejected, *merely* for want of habitation on the 20th December, 1803, whereas the present claim was rejected, not only on that ground, but also "because the board required further proof of the date of the concession."

Accordingly the recorder of land titles did not include this claim in the report of those which he recommended for confirmation, but he did recommend the confirmation of three other tracts as follows, viz:

1. Thomas Maddin, 1,000 arpents, situated in New Bourbon, county of St. Genevieve, under possession, habitation and cultivation, from 1797 to 1804.

2. Thomas Maddin, 6,000 arpents, situated on Big river, and river Aux Vases, county of St. Genevieve, under habitation, cultivation, and erection of a mill.

3. Thomas Maddin, jr., 800 arpents, on north branch of Saline, county of St. Genevieve, under habitation and cultivation in 1812 and 1813, and special location under Z. Trudeau, lieutenant governor.

These confirmations are found at pp. 300, 301, and 302 of the 3d vol. Pub. Lands.

The petitioners, not now pretending that there was any actual confirmation of their claim under the laws and proceedings above set forth, aver that it was *unintentionally omitted* in the reports, and ought to have been confirmed, and would undoubtedly have been confirmed but for the error or oversight of the recorder in omitting it; and in support of this averment they file a paper of which the following is a copy, viz:

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"CLAIM No. 1831.

"OFFICE OF THE RECORDER OF LAND TITLES,
St. Louis, January 6, 1818.

"There ought to be found on the lists supplied by this office for survey, a claim of 800 arpents, in the name of Thomas Maddin, situated on the Joachim, and of which the following is a copy from the record of the survey entered with my predecessor.

[Here is a plat.]

"Given under my hand the date above. Resurvey, United States expense.

"FREDERICK BATES.

"General WILLIAM RECTOR,
General Surveyor for Illinois and Missouri."

To this paper is appended a certificate that it is correctly copied from the book of "Confirmations by the Old Board and Recorder Bates," on file in the office of the surveyor general, in St. Louis.

This paper, with the proceedings had under it, form the only proof of the alleged *unintentional omission*, and your committee consider the evidence insufficient to establish the averment, for in view of the fact that Mr. Bates had actually recommended for confirmation a tract of 800 arpents, in favor of the claimant on the *Saline* river, it seems much more probable that he confounded the tract thus confirmed with that situated on the Joachim river, when he signed the paper of 6th January, 1818, than that he should have entirely omitted the Joachim river tract in his official reports, if his intention had been to confirm it; and this presumption is still further fortified by the consideration that, under the laws which formed his guide for acting on these claims, he could not properly have recommended the Joachim tract for confirmation.

Your committee therefore report that there is not, in their judgment, any legal or equitable ground shown for a gratuitous confirmation of this claim.

There remains, however, another question on which the committee have no hesitation in making a report favorable to the claimants. There is a strong equity in their favor for a preëmption right. The land has been occupied, cultivated, and improved by them, and those from whom they deraign title, for a number of years. It has been converted by their labor from wild land into cultivated farms and covered with valuable improvements, and there is no reason to doubt the good faith of those who have held it for the last thirty years. There is no justice in refusing them the right to purchase the land at the regular price charged by the government for entries of other lands that are open for sale in its land offices. Such a refusal would amount to a virtual confiscation of their improvements, and the fruits of the labor of themselves and their ancestors.

Your committee therefore report a substitute for the bill referred to them, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 106.]

The Committee on Private Land Claims, to whom was referred the memorial of the "Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States," and also the petition of Edson Sherwood and twenty-four others, praying for the confirmation to the above-named society of its title to a certain tract of land in the State of Wisconsin, have had the same under consideration, and ask leave to make the following report:

That in the year 1829, as petitioners state, the "Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States," by permission of the Secretary of War, entered upon lot No. 18, situated on the east side of Fox river, near Green Bay, in the State of Wisconsin, and established thereon a mission and school among the Menomonee and other Indians in that vicinity. The memorial of the society alleges that the mission continued in successful operation until the removal of the Indians to the west of the Mississippi, and that upwards of nine thousand dollars have been disbursed for improvements made by it on said land. The society, in order to indemnify itself as far as possible, as well as to carry on missions elsewhere, now asks Congress to pass an act allowing it to enter said land on the payment of the usual price demanded of settlers on public lands.

Your committee can see no objections to the prayer of the petitioners being granted, and a bill is accordingly reported, and its passage recommended, authorizing said society to enter, at the rate of one dollar and twenty-five cents per acre, the tract settled by it, and known as the Mission Farm, and containing 92.81 superficial acres.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1860.—Ordered to be printed.

Mr. POWELL made the following

REPORT.

[To accompany Bill S. 66.]

The Committee on the Judiciary, to whom was referred a bill to authorize and direct the settlement of the accounts of Ross Wilkins, James Witherell, and Solomon Sibley, report:

That by the act of Congress of the 21st April, 1806, "to provide for the adjustment of titles of land in the town of Detroit, and Territory of Michigan, and for other purposes," the duty and responsibility of its execution devolved upon the governor and the judges of the Territory of Michigan, to whom a further specific duty was assigned by the act of 28th May, 1830.

The said Wilkins, Witherell, and Sibley were judges of the said Territory of Michigan, and the said Wilkins and the legal representatives of Witherell and Sibley, late judges of said court, claim pay for services performed in the capacity of a land board, in pursuance of the acts of Congress aforesaid.

The salaries of the judges are fixed by law. They accept their positions with a full knowledge of the compensation they are to receive. If additional duties are imposed upon them, and no increase of pay is allowed by law, they discharge the duties, knowing at the time the compensation they are to receive. In no event should a judge be allowed a greater compensation than that fixed by law. The inauguration of a different policy would be contrary to the genius of the Constitution and destructive to the independence of the judiciary.

It would be a severe blow at the independence of the judges to make them dependent upon the coördinate departments of the government for their pay for services rendered. Had it been the intention of Congress that the judges who performed this service should have pay in addition to their salaries for the services to be rendered as a land board, provision for the same would have been made by law at the time the duty was imposed. For the reasons above stated, the committee are of the opinion that the bill should not pass.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 20.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1860.—Ordered to be printed.

Mr. POWELL made the following

REPORT.

[To accompany Bill S. 108.]

The Committee on Pensions, to whom was referred a petition for the relief of Mrs. A. L. Childs, widow of the late Brevet Brigadier General Thomas Childs, report:

That Brevet Brigadier General Thomas Childs, an honorable and gallant officer of the army of the United States, who was four times breveted, twice for distinguished services rendered in the Florida war, and twice for gallant conduct in the war with Mexico, died in service at Tampa Bay, Florida, of yellow fever, on the 8th of October, 1853.

The laws allow pensions to widows of officers of the army who are slain or die of wounds received in battle. We can see no reasons why the widows of those ordered by their government to posts where disease and pestilence prevail, of which they die, should not receive a like bounty. We are advised that many of the officers of the late General Childs' command at Tampa Bay, in 1853, died of the fever. The widows of some of the officers of his command who died in the same year, at the same place, have been allowed pensions by special acts of Congress.

We are of the opinion that the bill which is herewith reported, allowing Mrs. Childs a pension of $25 a month, should pass.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1860.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. 61.]

The Committee on Military Affairs and the Militia, to whom was referred S. Bill No. 61, *having had the same under consideration, report:*

This bill proposes a reorganization of the several departments and corps of the army to promote its efficiency, and a reduction of the present number of officers, with a consequent dimunition of expenditure of nearly $109,000.

The first and second sections provide for the appointment, by selection from the field officers of the army, of four additional brigadier generals, so that the whole number of brigadier generals in the army will be eight, and they are necessary to command as follows:

One, the military department of the east; one, the military department of the west; one, the military department of Texas; one, the military department of New Mexico; one, the military department of the Pacific; one, the military department of Utah; one to be adjutant general; one to be quartermaster general.

SEC. 3. Staff departments. In the adjutant general's department, four of the captains are to be promoted to majors, and the grade of captain in that department, now including eight officers, is to be prospectively abolished. In the quartermaster's department there is to be a reduction of one colonel, and one lieutenant colonel; an increase of four majors, and the grade of captain, now including twenty-eight officers, to be prospectively abolished. In the subsistence department, four captains are promoted to majors, and the grade of captain, now including eight officers, to be prospectively abolished.

In the medical department there is to be an increase of two assistant surgeon generals, with the assimilated rank of lieutenant colonel, and a reduction of two in the number of surgeons holding the assimilated rank of major.

In the pay department all the offices are to be abolished as they become vacant, and the duties now performed by paymasters are to be performed by officers of the quartermaster's department.

The advantages to the troops of this change will be, that payments to them may thereby be made more regularly and frequently.

Section 4 and 5 provide for the assignment of first and second lieutenants of regiments to duty in the staff departments, and for their return to their regiments, whenever it shall be necessary or proper.

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This will secure as staff officers those who have previously served in the regiments, and their experience therein will give them additional qualifications for staff duty, particularly when serving with troops in the field.

Section 6 is based upon the same theory as to the corps of engineers and ordnance. All the officers in these corps will thus be required to have previously served in the regiments, and thereby to have become acquainted with the duties, wants, and habits of troops. At present assignments are made to those corps from the graduated cadets, according to their standing in their class in the Military Academy. By the proposed change all the officers will first serve with troops, and the decision as to their fitness for the scientific corps will be made when the mind and character have been matured. Competition for these appointments will be open to all the first lieutenants of the army, thus inducing to a continuation of the study of science, and the competitors examination provided for, will secure attainment, whilst it demonstrates the capacity for further progress by unaided effort.

In the engineer corps there is a reduction of two captains and forty-nine lieutenants, and an increase of one lieutenant colonel.

In the ordnance corps there is a reduction of two captains and twenty-two lieutenants, and an increase of one lieutenant colonel.

The enlisted men of the ordnance department are to be organized as the enlisted men of the engineer corps are by existing laws.

Section seven provides for additional lieutenants in the regiments of the line, so that the details for staff, engineer, and ordnance duties, rendered necessary by the reductions proposed in those corps, may not interfere with the proper discharge of field and garrison duties.

It being important that the head of a company should not be separated from the body, it is provided that captains of companies shall not be detached from their commands for more than sixty days at any one time, except by special direction of the President.

Section eight provides auxiliary means for carrying out the permanent organizations before provided for.

Section nine provides that promotions in the regimental grades of commissioned officers shall be by regiments or corps and not by arms of service as at present.

The following tables will exhibit the changes in the several departments, and the increase and reduction of annual expense consequent thereupon.

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General officers.

Major general, 1; no change. Brig. generals, 3; 4 by brevet; 3 added by 1st and 2d sects.

Staff departments.

	Colonel.	Lieut. colonel.	Major.	Captain.	Total.	Reduction.
Adjutant general's department now	1	1	5	8	15	0
As proposed	0	1	9	0	10	5
Inspector general's department now	2	0	0	0	2	0
As proposed	0	0	0	0	0	2
Quartermaster's department now	2	2	4	28	36	0
As proposed	1	1	8	0	10	26
Subsistence department now	1	1	2	8	12	0
As proposed	1	1	6	0	8	4
Medical department now	1	0	26	80	107	0
As proposed	1	2	24	80	107	0
Pay department now	1	2	25	0	28	0
As proposed	0	0	0	0	0	28
Total officers now	8	6	62	124	200	0
As proposed	3	5	47	80	135	60

Engineers and ordnance.

	Brig. general.	Colonel.	Lieut. colonel.	Major.	Captain.	1st lieuts.	2d lieuts.	Bvt. 2d lieuts.	Total.	Reduction.
Two engineer corps now	0	2	3	8	22	22	22	5	84	0
As proposed	0	2	4	8	20	0	0	0	34	50
Ordnance corps now	0	1	1	4	12	12	6	4	40	0
As proposed	0	1	2	4	10	0	0	0	17	23
Total now	0	3	4	12	34	34	28	9	124	0
Total proposed	0	3	6	12	30	0	0	0	51	73

SYNOPSIS.

Reduction in—										
Staff departments	0	5	1	15	44	0	0	0	65	0
Engineers and ordnance	0	0	0	0	4	34	28	9	75	0
Total reductions in officers									140	
Additions in—										
Staff departments	4	0	0	0	0	0	0	0	4	0
Engineers and ordnance	0	0	2	0	0	0	0	0	2	0
Regiments	0	0	0	0	0	60	16	0	76	0
Total addition in officers									82	58

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The increase in expenditure will be—	
1 brigadier general	$3,882
There being now four brigadier generals by present organization, and three brigadier generals by brevet assigned to duty as such.	
1 lieutenant colonel of topographical engineers	2,532
1 lieutenant colonel of ordnance	2,532
60 first lieutenants of regiments	78,120
16 second lieutenants of regiments	19,872
Additional pay of 26 lieutenants detailed for staff duty, (sec. 4)	11,544
Additional pay of 50 lieutenants detailed for engineer and ordnance duty, (sec. 6)	10,398
Total increase of expenses	128,880
Reduction of expenditure—	
5 colonels of staff	13,536
1 lieutenant colonel of staff	2,532
15 majors of staff	33,660
48 captains of staff, engineer and ordnance	79,200
71 lieutenants of engineer and ordnance	102,950
Additional pay of 19 regimental quartermasters, (sec. 5)	5,928
	237,806
Difference or reduction per annum	108,926

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1860.—Ordered to be printed.

Mr. FOOT made the following

REPORT.

[To accompany Bill S. 111.]

The Committee on Claims, to whom was referred the memorial of Aaron H. Palmer, having had the same under consideration, and concurring in the views of this committee at the first session of the last Congress, as explained in their report of that session, adopt that report as their own at the present session; which report is as follows:

IN THE SENATE OF THE UNITED STATES, APRIL 16, 1858.

The Committee on Claims, to whom was referred the memorial of Aaron Haight Palmer, make the following report:

That the memorial of the petitioner was presented to the Senate by Hon. J. M. Clayton on the 18th of January, 1855, and referred to the Committee on Foreign Relations; and that it was subsequently printed, by order of the Senate, as miscellaneous document No. 10, 2d session 33d Congress.

In presenting the memorial, Mr. Clayton made the following remarks:

"I present the petition of Aaron Haight Palmer, praying compensation for services rendered by him in communication, and by and under the direction, and with the approbation of three Secretaries of State, I believe, and of several committees of this body. I shall not undertake to state the matters set forth in the petition; the committee, of course, will inquire into them. I only wish to say, as an act of justice to this gentleman, that, from all the information which I have had an opportunity of receiving heretofore in another position, I believe he is entitled to more credit for getting up the Japan expedition than any other man I have heard of. He has thrown more light on it, and given more information on the subject to the State Department, and to the Congress of the United States, than any one else. His merits, however, in this particular, will be canvassed by those to whom the petition will be referred. I move its reference to the Committee on Foreign Relations. I also ask that it may be printed; which motions were agreed to."—(Congressional Globe January 18, 1855, page 307.)

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The memorial sets forth that the petitioner has devoted many years to the collection of valuable information and statistics in relation to the geography, productive resources, trade, commerce, &c., of the independent oriental nations, and particularizes at great length what he had done. He states, among other things, that in January, 1848, he inclosed, in a letter from New York to President Polk, a memoir, stating the importance of operating commercial intercourse with those nations; that in the following February, by invitation of the Secretary of the Treasury, he visited Washington for the purpose of promoting the action of our government in furtherance of the views and suggestions contained in the document sent to the President. That, in consequence of action of the Senate on the papers furnished by him, he was detained in Washington, laboring for the government in the superintendence of the printing of the papers, until September of that year.

That, in 1849, he completed a series of papers containing geographical descriptions of many oriental nations, enumerated in his memorial, among them the empire of Japan. That he forwarded to Mr. Clayton, then Secretary of State, a brief *resumé* of said papers, which Mr. Clayton deemed of sufficient importance to cause them to be published. That he afterwards submitted to Mr. Clayton a plan for opening Japan, which was ultimately adopted, and formed the basis of the policy of our government in the late maritime expedition under command of Commodore Perry. That he had several interviews with that officer before he sailed, and furnished him with all the information possible; and that the last one was by special written request of the Secretary of the Navy.

Mr. Palmer further represents that, in pursuance of certain resolutions, presented by Mr. Hamlin, chairman of the Senate Committee on Commerce, and adopted by the Senate, on the 21st of February, 1850, calling on the Secretary of State for information respecting the barbarous treatment of shipwrecked American seamen in Japan; also, in regard to the independent oriental nations, and their capabilities for a profitable American commerce, &c., he was employed by Mr. Clayton to assist him in preparing his answer to said resolutions, and that he was diligently employed for about three months in that business.

The memorial concludes by asking a reasonable compensation for the services thus rendered to the United States.

No action was taken by the Committee on Foreign Relations upon the memorial in 1855, and on the 19th of May, 1856, it was again referred to the same committee.

No report upon it was made to the Senate, and on the 9th of December, 1856, the Committee on Foreign Relations was discharged from the further consideration of it, and it was referred to the Committee on Commerce, which committee was, on the 12th of February, 1857, discharged from its further consideration, and it was referred to the Committee on Claims; but the then near approach to the end of the session prevented any definite action, and on the 5th of January, 1858, it was again referred to this committee.

On examining the papers, your committee find among them a

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report, evidently prepared by Mr. Clayton, while the memorial was before the Committee on Foreign Relations, and in his particular charge, as a member of that committee.

There is appended to it a note in the handwriting of Mr. Clayton, addressed to the clerk of the committee, in the following words:

"Mr. Montague will please file these papers, for the present, in committee.

"J. M. CLAYTON.

"JULY 10, 1856."

The petition is indorsed by the clerk of the committee as follows:

"The within was sent to me by the Hon. J. M. Clayton, with the accompanying note, dated July 10, 1856.

"E. T. MONTAGUE,
"Clerk Committee on Foreign Relations."

It is a well-known fact that Mr. Clayton's health was such, during the summer of 1856, as to prevent him from attending the Senate, except occasionally; and the inference is that he had prepared the report, intending to submit it to the committee, but that his failing health prevented, and he therefore sent it to the clerk to be filed, with a view of submitting it when his health would allow his attendance on the committee; but before that opportunity occurred Mr. Clayton died.

Your committee, therefore, insert the report thus prepared as a part of this report, and for the additional reason that Mr. Clayton, from his official position, knew better the actual services of Mr. Palmer than any other member of the Senate.

The Committee on Foreign Relations, to whom was referred the memorial of Aaron Haight Palmer, "praying for compensation for services in collecting valuable information and statistics in relation to the geography, productive resources, trade, commerce, &c., of the independent oriental nations," having had the same under consideration, beg leave to report:

That, from an attentive examination of the memorial and accompanying documents submitted to the committee by Mr. Palmer, it satisfactorily appears that he has been diligently occupied for a considerable number of years in procuring, with great research and untiring industry, from original and authentic sources, (in certain instances from oriental rulers themselves,) a large amount of new and valuable information, geographical, political, and commercial, in regard to those eastern nations, especially Japan, and their capabilities for a profitable American commerce.

That he has, on various occasions between the years 1846 and 1851, addressed interesting and valuable communications on the subject to the House of Representatives and to three Presidents and Secretaries of State, which have been printed as valuable public documents, and are generally considered as important contributions to our knowledge

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of several of the comparatively unknown maritime nations of the east, (particularly Japan,) and have proved of high interest and value to our government in opening and extending our commercial relations with several of those eastern countries.

Among those contributions of Mr. Palmer, his "plan for opening Japan," submitted by him to the Secretary of State on the 17th of September, 1849, which met with the Secretary's entire approval, appears to have been subsequently adopted as the basis of the policy of our government in the expedition and mission to the ruler of that empire, so successfully accomplished by Commodore Perry, in accordance, it would seem, with the leading views, suggestions, and recommendations contained therein.

Your committee also find that Mr. Palmer, between 1842 and 1853, addressed a series of letters, communications, and contributions, including copies of his printed documents, to high functionaries in Japan, having for their object the opening of that empire to American intercourse and commerce, and which he has transmitted, from time to time during the aforefmentioned periods, to Nagasaki, through the only safe and reliable channels of communicating with that secluded and mysterious empire. It may reasonably be presumed these have had an important influence and agency at that court in preparing the way for the successful result of Commodore Perry's mission.

Mr Palmer, it appears, has also printed, at different times, 2,250 copies of his memoirs, at his own expense, for distribution to senators, members of Congress, and executive officers of the government; that, at the request of several senators, he prepared a large outline map, to illustrate his memoirs on Siberia, &c., printed by order of the Senate in 1848, and, in consequence of the delay at the time in the printing of the Senate documents, he claims compensation for nine months' services, in which he was necessarily detained during that year in the preparation of the map and correcting the proof-sheets of the usual, as well as extra, numbers of copies of said memoir ordered by the Senate; and also for four months' services in preparing a report, illustrated by a special chart, for the Secretary of State, under a resolution of the Senate of the 16th January, 1850.

In view of the highly meritorious and valuable services thus rendered by Mr. Palmer, and their important results in preparing the way for opening new marts in the east to our commerce, your committee have come to the conclusion that he is justly entitled to thousand dollars in compensation for such services and expenses, and they accordingly report a bill allowing the same, and recommend its passage.

Your committee, after a careful examination of the large mass of papers accompanying the memorial, both printed and in manuscript, have come to the conclusion that the petitioner is entitled to relief; and they therefore report a bill in his favor making an appropriation of the sum of three thousand dollars.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of John S. Livermore, praying that the pay of invalid pensioners may commence from the date of the disability, beg leave to report:

That the invalid pension laws and the rule of the department provide that the right to a pension shall commence only from the completion of the testimony.

Your committee can see no good reason for departing from the general rule adopted in such cases, and therefore ask to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the memorial of Nathaniel Rye, of Tennessee, praying to be allowed a pension, beg leave to report:

That the memorialist states, in his application at the Pension bureau in 1853, that he enlisted as a private in the year 1812, for five years, in the 12th regiment United States infantry; and that he was wounded in the leg and arm at the battle of Lundy's Lane; and that at the battle of Plattsburg he was wounded in the thigh by a musket ball, and was also shot in his left eye.

In his memorial to Congress he states that in an engagement with the British at Beaver Dam, on the Canada frontier, he was shot twice in the thigh, and at Lundy's Lane he had his left eye put out by the bursting of a musket, was struck in the right leg with a grape shot, and received a sabre cut in his left arm.

His statements are contradictory, and no reliance can be placed upon them; besides, had he been disabled, as he states, he would have been discharged upon "certificate for pension."

Your committee therefore recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Joseph Kerwin, who was wounded in the Florida and Mexican wars, asking an increase of pension, beg leave to report:

That said Kerwin served gallantly in the Florida and Mexican wars, and to his firmness and bravery, his superior officer, Lieutentant Colonel W. H. T. Walker, was indebted for his life at the battle of Okeechobee, Florida; that the petitioner was severely wounded at the battle of Churubusco, for which he is now in the receipt of a pension at $8 per month, the highest rate allowed to non-commissioned officers, musicians, or privates.

The petitioner now asks that his pension may be increased to $13 per month, the rate of pay he was receiving as sergeant at the time of his discharge. This is opposed to the provisions of the general laws relating to invalid pensions and to precedents in special acts, except in the case of loss of limbs, or where the disability is such that the pensioner is obliged to employ the services of others in the ordinary functions of life.

The committee therefore recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mrs. Eliza J. Van De Venter, widow of the late Major E. Van De Venter, praying "back pension" from the disbanding of the "ten regiments" to June, 1854, *from which date her husband was allowed a pension, beg leave to report:*

That the invalid pension laws declare that the pension shall commence only from the completion of the testimony in the case, and such has been the uniform practice of your committee; and although the petitioner states that her husband was deterred from an earlier application for a pension by the hope of a reappointment in the army, the committee can see no sufficient reason for departing from the general rule in such cases, and therefore recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 27.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1860.—Ordered to be printed.

Mr. FITZPATRICK made the following

REPORT.

[To accompany Bill S. 114.]

The Committee on Military Affairs and the Militia, to whom was referred the petition of R. F. Blocker, E. J. Gurley, and J. F. Davis, having had the same under consideration, report:

The petitioners claim compensation in the sum of $5,000 for legal services in defending Captain Anderson, his officers and men, who were arrested and tried for an alleged violation of the laws of Texas in executing an order of their superior officer.

The circumstances of this case are these: On the 16th of April, 1854, Captain Richard H. Anderson, U. S. A., received written instructions from Brevet Brigadier General Harney to proceed to Fort Gibson with a detachment of four non-commissioned officers and twelve privates and arrest assistant surgeon Josephus M. Steiner, of the medical corps U. S. A., and convey him to Austin for trial by court-martial for mutiny and insubordination in killing Major R. A. Arnold, his superior officer. These written instructions stated "that H. P. Brewster, esq., a gentleman of legal learning, would accompany him, and give such advice as the exigencies of the mission might require." But sickness in Mr. Brewster's family so detained him that Captain Anderson went upon his mission without any legal adviser and arrested Dr. Steiner, while he was claimed by the sheriff of the county as his prisoner, under an indictment for the murder of Major Arnold. In returning to Austin with the prisoner in his custody, Captain Anderson yielded to the request of Dr. Steiner to pass Waco on his way, which is not on the most direct road from Fort Gibson to Austin; and while at Waco, Captain Anderson and his detachment were arrested by legal process under a charge of rescuing the prisoner (Dr. Steiner) from the custody of the sheriff of Hill county.

Captain Anderson was taken before a court of inquiry upon a charge the punishment of which was "hard labor in the penitentiary not less than five nor more than ten years."

Under these circumstances Captain Anderson employed the petitioners to defend him and his men, and advised his superior officer of what had been done. Captain Anderson was held to answer the charge; the

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men were discharged. The petitioners also defended Captain Anderson in the district court of Hill county, and the trial resulted in his acquittal. The claim for these services is regarded as reasonable and fair by several practising attorneys, whose letter accompanies the petition.

Payment of this claim has been refused by the department because it was alleged that Captain Anderson in visiting Waco had exposed himself to the arrest, and had not obeyed his instruction to reach Austin by the most direct route. The decision of the Secretary of War was "that the case as presented did not warrant the employment of counsel by the United States."

Captain Anderson was afterwards tried and acquitted by a court-martial upon specifications and charges arising out of his conduct in connection with the arrest, &c., of Dr. Steiner.

The committee have carefully examined this case, and are satisfied that the claim as presented is much too large; yet they are of the opinion that as the petitioners were employed in good faith, and labored industriously in defense of their clients, they are entitled to a proper recompense for their services, and report a bill for their relief allowing them $1,000 in full of their claim.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1860.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany Bill S. 30.]

The Committee on Post Offices and Post Roads, to whom was referred the petition of Sheldon McKnight, praying additional compensation for carrying the mails on the Cleveland, Detroit, and Lake Superior routes, from the year 1848 *to the present time, have had the same under consideration, and beg leave to report:*

The petitioner alleges that he transported, at the request of the postmasters and agents of the Post Office Department, the United States mail, in steamboats, between Cleveland, Ohio, and Detroit, Michigan, and the several ports on Lake Huron and Lake Superior, from the year 1848 up to the present time, during the season of navigation, for which service he has not received adequate compensation, and he therefore prays that Congress will allow him a fair and equitable remuneration for said service.

The evidence before the committee is clear and satisfactory of the faithful and efficient character of the service rendered by the petitioner, and that it was undertaken and performed at the request of the officials having charge of the mails.

The most satisfactory evidence of the performance of the service is to be found in the testimony of Captains S. W. Turner, John Wilson, and R. S. Ryder, confirmed by lengthy affidavits of John Senter, Michael Duffy, Daniel Pitman, A. S. Williams, Peter White, M. M. Williams, postmasters; and John Griswold, James Mercer, R. S. Graveraet, and Henry J. Buckley, shipping merchants and business men at the different points along the route of this service. This evidence, coming from men of character and experience, fully conversant with all the facts connected with the transportation of the mails on this route, and competent to judge of the inadequacy of the compensation allowed the petitioner for said service, the committee are disposed to place the fullest reliance thereon as substantiating the facts alleged by the petitioner.

The evidence being somewhat voluminous, the committee will not burden the Senate with its full publication, as it would probably occupy many pages of printed matter, but will solicit its attention to

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the very explicit affidavit of Captain John Wilson, appended to this report, marked Exhibit A.

All the witnesses concur in the opinion set forth at length by Captain Wilson, that the petitioner, who was the pioneer in the steamboat service of the northwestern lakes, having performed the service of mail contractor at a time and under circumstances of great hazard to life and property, ought to receive compensation proportionate to the service rendered and danger incurred.

Captain Redmond S. Ryder, who has had eighteen years' experience in navigation of the lakes, corroborates the statement of Captain Wilson, and mentions numerous instances of the mails being carried by land at the petitioner's expense during boisterous periods of the year when a landing could not be effected by his boats at various points of mail distribution. Other witnesses testify that the petitioner's vessels have been detained for hours at points where a landing could only be effected by small boats at great risk, when it was not incumbent upon the petitioner to incur that danger, he being actuated only by a desire to accommodate the inhabitants of an isolated portion of the country, and the hope of eventually receiving a proper remuneration through the representations of the local postmasters at whose solicitation the service was performed.

The following extract of a letter from Mr. Dundas, Second Assistant Postmaster General, to the petitioner, dated January 26, 1859, contains an acknowledgment of valuable services rendered the department by the petitioner.

"As regards your intercourse with the department, in performing mail service and in furthering the mail facilities upon the upper lakes, it is only simple justice to state that your efforts in that direction have been meritorious and of an honorable character, and that you have in some instances been of *great service* to the department in effecting the mail facilities for that upper country."

Further evidence exhibits the losses sustained by the petitioner in steamboats and propellers by various casualties upon the upper lakes, amounting in the aggregate to $130,000, the greater part of which is irretrievable, owing to the impossibility of effecting insurance after the 20th of November.

The committee are satisfied, from all the evidence in the case, that the service for which compensation is sought was actually and faithfully performed; that the interests of a large and active business community, engaged in the development of an important source of national wealth, required the performance of the service rendered by the petitioner, and for which he has not received any adequate compensation.

The only compensation received by the petitioner for the entire service was what was paid him by the postmasters on the route for carrying the local mails at the nominal compensation of one cent each for letters, and half a cent each for newspapers; which mails formed but a small part of the entire mail transported by him. The larger portion of the mail was what is commonly known as the "through mail," for the transportation of which no compensation whatever was allowed.

The present compensation for this service under contract is one hun-

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dred dollars per round trip, a distance of twenty-two hundred miles, which is probably the cheapest service in the United States, which your committee believe should be awarded to the petioner for his services: and they report a bill accordingly, and recommend its passage.

EXHIBIT "A."

STATE OF MICHIGAN, *Wayne County, ss:*

I, John Wilson, of lawful age, being duly sworn, depose and say: That my occupation is that of a mariner; that I have been engaged in said business on the northwest lakes for 21 years; that I have acted in the capacity of master for 13 years; am well acquainted with Sheldon McKnight and his Lake Superior line of steamers, and know that the affidavit of J. T. Whiting, with the accompanying schedules A and B, exhibiting the number of steamers belonging to McKnight and employed on the Lake Superior route, as also the exhibit of the number of steamers lost, to be a true and correct statement; that I was employed by said Sheldon McKnight in the capacity of master during the season of 1851, having charge of the Monticello until her loss at Misery bay, on Lake Superior, and in 1852 of the steamer Baltimore; that I assisted in the hauling of said steamers over the land, distant one mile around the Falls of St. Mary; that I sailed for said McKnight during the season of 1855, 1856, and 1857, as master of the steamer Illinois, and know that she run regularly between Cleveland, Detroit, and Lake Superior. I am well acquainted with the navigation from Cleveland to Superior City, and state that it is the most perilous and difficult of all the other lake routes with which I am acquainted; that the expense of running steamers on said Lake Superior route is about one-fourth greater than on the other lake routes; that I am well acquainted with the manner of delivering the United States mails on Lake Superior, having carried the mail on said lake; and I state that, from the insufficiency of the harbors on Lake Superior and the roughness of the lake, and the frequency of being compelled to land the mails at night and in open boats, remaining off shore with the steamer, the mail service is not only difficult, but peculiarly dangerous and hazardous; and I further state that frequently, having had to run by various ports from stress of weather, I have sent back the United States mails, overland, at considerable expense to the steamer.

And I further state, from my own personal knowledge, that said McKnight's line of steamers have carried regularly the United States mail since the year 1849, myself having observed the said mail going on and off of his boats since that period; and I furthermore state that, owing to the extra insurance on boats running on this route, as well as the impossibility of obtaining insurance risk after the 20th of November, the value of the service performed in carrying the United States mail on the said route is not less than $125 per round trip from Cleveland and Detroit to Sault Ste. Marie, and $200 per round trip from Cleveland and Detroit to Ontonagon, Superior City, and La Pointe.

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I say the above from the fullest knowledge of the expense, danger, and trouble attending the navigation of said route.

J. WILSON.

Sworn to and subscribed before me this seventeenth day of December, A. D. 1858.

DE GARMO J. WHITING.
Notary Public, Wayne County, Michigan.

STATE OF MICHICAN, *County of Wayne, ss:*

I, Enos T. Throop, clerk of said county, and clerk of the circuit court for the county of Wayne, do hereby certify that De Garmo J. Whiting, whose name is subscribed to the jurat of the annexed instrument, and therein written, was, at the time of taking such jurat, a notary public in and for said county, duly commissioned and qualified, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to the said jurat is genuine.

In testimony wereof, I have hereunto set my hand and affixed the [L. S.] seal of said court and county, at Detroit, this 17th day of September, A. D. 1858.

E. T. THROOP, *Clerk.*

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1860.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany Bill S. 29.]

The Committee on Post Offices and Post Roads, to whom was referred the report of the Court of Claims adverse to the claim of Arthur Edwards and others, for compensation for carrying the through mails to and from various ports on Lake Erie during certain periods in the years 1849, 1850, 1851, 1852, *and* 1853, *respectfully report:*

The claimants allege that they were the managing owners of the steamboats Arrow, Baltimore, Southerner, John Owen, and Bay City, between the years 1849 and 1853, inclusive; that during that time their boats were employed by the persons having charge of the United States mails to transport the same to and from the following ports on Lake Erie, viz:

On steamer *Arrow*, daily, (Sundays excepted,) both ways, between Sandusky City and Detroit, from the 1st of March to the 1st of December, 1849; also from the 1st of March to the 1st of December, 1850; also from the 1st of March to the 1st of December, 1851; also from the 1st of March to the 1st of December, 1852; and on steamer *Bay State*, from the 1st of March to the 1st of December, 1853.

On steamer *John Owen*, between Toledo and Detroit, daily, from the 31st of March to the 30th of December, 1851; and on steamer *Arrow*, from the 30th of March to the 31st of December, 1853.

On steamer *Southerner*, between Detroit, Michigan, and Cleveland, Ohio, daily, from the 7th of March to the 21st of November, 1850; also from the 19th of March to the 21st of November, 1851. And on steamer *Baltimore*, from the 12th of April to the 21st of November, 1852.

That they transported both the through and local mails during the above-mentioned periods, but have been paid for transporting the local mails only, at the rates allowed under the order of the Postmaster General of 21st March, 1849, instructing the postmasters at different points to "make up and forward mails daily between their respective offices in boats making the greatest expedition, at one cent each for letters, and half a cent each for newspapers, to be paid at the office to which the letters or newspapers are delivered;" notwithstanding the

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through mails were transported at the request of the department officials, with the understanding that the claimants should be compensated therefor. That they applied to the Postmaster General for compensation for said service, but he has refused to make such compensation, although, as the claimants are informed and believe, it has actually been done in several other like cases.

That, whatever may have been the usage, the claimants received and carried said through mail at the request of the postmasters and special agents of the department, and have faithfully transported the same during the time above specified, and the government, having derived the benefits and advantages of such transportation, are bound to pay a reasonable and fair compensation therefor.

There is no doubt the alleged service was performed, as claimed, with the sanction of the Post Office Department and under the express orders of its officials. The proof is abundant and conclusive.

It is also clear and indisputable that the claimants have received no compensation for transporting said local and through mail beyond what was allowed for carrying the local mail alone, and the ground assumed by the department is that the amount allowed for the local mail was understood to be in full for the whole service.

No evidence appears to sustain this assumption of the department. On the contrary, the testimony of the postmasters and special agents upon that point shows that the captains of the claimants' boats uniformly demanded pay for transporting the through mail, as a separate service from the local mail, and of which demands the department was advised at the time.—(See testimony of A. S. Williams, postmaster at Detroit, Daniel M. Haskell, postmaster at Cleveland, and Captain S. J. Atwood, in abstract of testimony hereto annexed.)

The following testimony of A. C. Harris, special agent of the department, is unmistakable and conclusive that the claimants performed said service with the expectation of remuneration, besides what was allowed upon the local mails, and that otherwise they would not have performed it:

"A. C. Harris deposes that from July, 1850, to March, 1853, he was special agent of the Post Office Department, and during that period passed very often over the routes from Cleveland to Detroit, Sandusky to Detroit, and Toledo to Detroit, by steamboat. The captains (of the steamers) often objected to receiving the great through mails, saying that the postmasters (local) refused to pay them anything except for the local mails, and as they got nothing for it, they would not carry it, unless the witness would undertake to see them paid for the service. *He requested them to take the mail aboard, and assured them they would be paid for the service;* and, in so doing, he states *that he acted under the direction of the Post Office Department.*"

The next question that presents itself is the ground upon which the Court of Claims rejected the claim for compensation for said service, and how far that decision affects the rights of the claimants to an equitable claim upon Congress.

It will be seen from the opinion of the Court of Claims, hereto annexed, that that tribunal declined to report a bill for the benefit of the claimants, because the express contract testified to by A. C. Har-

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ris, the special agent of the department above referred to, made by him with the claimants, and authorized, as he swears, by the Post Office Department, does not appear by the testimony to have been expressly authorized by the Postmaster General himself. But the committee are of opinion that when an agent of the Post Office Department testifies that a contract made by him, within the fair scope of his agency, was sanctioned by the Post Office Department, it may fairly be inferred, in the absence of any testimony to the contrary, that it was authorized by the Postmaster General himself, the head of that department.

That the service was performed the court had no doubt, but for any compensation beyond what the claimants received for the local mails "they must depend upon the discretion of Congress."

The *equitable rights* of the claimants to compensation for their services was, therefore, not denied, and the decision of the Court of Claims should not, in the opinion of the committee, prejudice the appeal to Congress for a just remuneration.

That the service which the claimants performed under the assurance and expectation of remuneration was beneficial to the department and useful to the public, and such as would have been incumbent upon the department to supply, aside from the local mail service, there can be no doubt.

It will be seen from the testimony of Mr. Harris (see abstract of testimony annexed) that the captains of the claimants' boats used every means within their power to facilitate the through mails, and that it often occurred that the mail could not be got to the boats on the arrival of the cars by the time of leaving, and in such cases the captains, at his request, delayed starting their boats from a half hour to an hour and a half, until the mails could be put on board. Every accommodation therefore seems to have been extended to the department by the claimants, and no more efficient or regular service could have been performed had they been regular contractors.

In view of all the facts in the case, the committee believe that the claimants are justly entitled to a suitable recompense for their services.

In determining what that recompense should be, it may be proper to consider what proportion the through mails bore to the local, for which the claimants received compensation.

The number of letters and newspapers transported in the through mails could not be ascertained, as the mails were always transferred from the cars to the boats, and from the boats to the cars, without being opened. The only method of approximating to the number is by comparing the number of bags, size, and weight of the through mails with the number of bags, size, and weight of the local mails, as testified to by the different witnesses. The testimony upon that point varies in estimating the through mails to be from four to fifteen times larger than the local mails. One witness testifies that one through mail numbered eighty bags, another witness says he counted 128 bags in one through mail, and another witness swears that one through mail weighed upwards of eight tons. The average of the testimony shows the amount of through mail to be from $6\frac{1}{2}$ to $7\frac{5}{8}$ times greater than the local mail.

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The amount paid for carrying the local mail appears to have been a very moderate one, from the fact that it was for letters but one-third of the amount (viz., three cents) to which the department was limited by law.

By computing the number of trips of the claimants' boats, during which they carried the mail, it appears that the average compensation received, (being for the whole time $10,544 95,) would be less than $3 75 per passage.

Calculating the through mail to be (at the average of the testimony) seven and five-eighths times larger than the local mail, at the ratio of compensation received, it would amount to $28 60 per trip, which the committee believe should be paid to the claimants for said service. They report a bill for that purpose and recommend its passage.

The testimony on the subject of the relative amount of through and local mails is perfectly clear and satisfactory.

Full extracts of the testimony accompany this report.

IN THE COURT OF CLAIMS.

ARTHUR EDWARDS, JOHN OWEN, AND IRA DAVIS *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the court.

The petition alleges that from 1849 to 1853 the claimants were employed by the persons having in charge the United States mails to transport the mails to and from various ports on Lake Erie, in steamboats, as hereinafter mentioned; that though there was no specific contract on the subject, it was understood that the claimants should receive a reasonable compensation for the service; that the claimants accordingly transported both the local and through mails in their steamboats, daily, as follows: Between Sandusky City and Detroit for certain specified periods in the years 1849, 1850, 1851, 1852, and 1853; between Cleveland and Detroit for certain specified periods in the years 1850, 1851, and 1852; and between Toledo and Detroit for certain specified periods in the years 1851 and 1853; that the claimants have been paid for the said transportation of the local mails, but that the Postmaster General has refused to allow them compensation for carrying the through mails as aforesaid; that those through mails were transported at the request of the agents of the government; and that the claimants are entitled to be paid for such service the sum of fifty thousand dollars.

The documentary evidence is substantially as follows:

By an order of the Postmaster General of the 21st of March, 1849, the postmasters at Cleveland, Sandusky, Toledo, and Detroit, were instructed to make up and forward mails daily between their respective offices in boats making the greatest expedition, at one cent each per letter, and half a cent each per newspaper, to be paid at the office to which the letters and newspapers were delivered.

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On the 6th of May, 1851, the First Assistant Postmaster General wrote to the postmasters at Toledo, Sandusky, and Cleveland, requiring them to report if they were or had been paying captains of steamboats on Lake Erie for letters, packages, and newspapers made up as through mails, as well as for letters, &c., sent to their offices for delivery and distribution; and that if they had been or were then paying for through mails, they were requested to state under what instructions they did so; and, in making their report for 1849 and 1850, to state whether the captains of the boats were paid for through matter, and if so, how did they (the postmasters) go into the count.

To the letter just mentioned the postmasters at Toledo and Cleveland answered that they had only paid for letters, packets, and newspapers sent to their offices for delivery and distribution. The postmaster at Sandusky answered that he had paid for through mails, but he does not state how much he had paid, nor does he refer to any instructions authorizing such payment.

Under an order of the Postmaster General of the 7th of June, 1851, the postmasters at Sandusky and Toledo were instructed that, under the order of the 21st of March, 1849, they would pay the one cent on letters and half a cent on papers for such letters and papers as were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. And, at the same time, the postmaster at Cleveland was instructed that, as a contract for carrying the mail between his office and Buffalo, New York, had been made, the order of the 21st of March, 1849, was rescinded, except in cases of boats delivering mails from Detroit and Toledo; the boats so delivering to be paid for no through matter.

Also, on the 7th of June, 1851, the First Assistant Postmaster General instructed the postmaster at Cleveland that, under the order of the 21st of March, 1849, he would thereafter pay the boats conveying the mails from Detroit, and all other points except from offices where there was a contract existing for the service, one cent for each letter and half a cent for each newspaper, which were for delivery at his office only; and that he would also pay one cent for each package of letters, and one-half cent for every package or bundle of newspapers for other offices, that is, such offices for which the matter is separated and assorted at his office.

There are several depositions taken, which are substantially as follows:

L. W. Beebe. He was deputy mail agent and messenger of the Post Office Department at Detroit, from 1849 to 1855, and attended to the receipt and delivery of the mails. He separated the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, delivering such local mails to the Detroit post office, and sending the through mails on, by cars and boats, towards their destination. The through mail was, on an average, five or six times larger than the local mail.

The Southerner commenced running in the fall of 1849, and continued running until the close of navigation, between Detroit and Cleveland. She commenced running again in the spring of 1850 with

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the Baltimore, the two boats making daily trips between Detroit and Cleveland. They were both owned by Arthur Edwards, and carried the mail daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route in connection with the St. Louis, going down one day and back the next. The St. Louis was owned by Captain Ward, and the Southerner by Arthur Edwards.

On the Sandusky and Detroit route, the Arrow, owned by Arthur Edwards, made daily trips in 1849, 1850, 1851, 1852, and part of 1853, when the Bay City took her place.

On the Toledo and Detroit route, the John Owen ran in the forepart of 1849, the whole of 1850, 1851, and 1852, and part of 1853, when her place was taken by the Arrow. During this time she carried the mails every other day, and was owned by Arthur Edwards. The boats on the Toledo line did not carry the mails all this time, but only during a portion of the years above mentioned. He was not positive as to the time.

A. C. Harris. From July, 1850, to March, 1853, he was a special agent of the Post Office Department, and, during that period, passed very often over the routes from Cleveland to Detroit, Sandusky to Detroit, and Toledo to Detroit, by steamboat. He thinks that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth. The local mail is that which is destined to the post office at the end of the route, to be opened there. The through mail is that which is destined to points beyond such office.

On the Cleveland and Detroit route, the mails were carried by the steamers Southerner and Baltimore during 1850 and 1851; by the steamers Arrow and Bay City, on the Sandusky and Detroit route, during his agency; between Toledo and Detroit, by the Arrow and Owen. The mails were put on the boats running over said routes by directions of the postmasters generally, and sometimes by the witness' direction. The captains often objected to receiving the great through mail, saying that the postmasters refused to pay them anything except for the local mails; and as (they) got nothing for it they would not carry it, unless the witness would undertake to see them paid. He requested them to take the mail aboard, and assured them that they would be paid for the service; and in so doing he states that he acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of cars by the time of leaving. In such cases the witness often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half an hour to an hour and a half.

D. D. Beebe. He was clerk in the Cleveland post office in 1852, and thinks that the through mail carried on the steamers in that year was at least twenty times larger than the local mail.

James Welch. He was a clerk in the Cleveland post office in 1851 and 1852. The mails in those years were carried between Cleveland and Detroit by steamboats daily. The mail going east during those years consisted mainly of the through mails destined for Pittsburg, Baltimore, Washington, Columbus, and Cincinnati; and going west,

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of matter from those and other offices going to Chicago and other offices west; together with the local mail between Detroit and Cleveland post offices. He thinks it safe to say that the through mail carried over this route was, on an average, ten times as large as the local mail. He was in the habit of handling the mail in delivering it to the mail carrier, and in separating it on its arrival for opening the local mail for delivery.

L. A. Pierce. He was, in 1850 and 1851, master of the steamboat Southerner, running between Cleveland and Detroit. He ran the boat from the 17th of March, 1850, till the 2d of November following; and from the 19th of March, 1851, to the 20th of November following, carrying daily the through and local mails the two seasons. The local mail was made up here (Cleveland) and destined for Detroit, and *vice versa*. The through mail was destined for points beyond Detroit on one side, and Cleveland on the other. He thinks the through mail would average from six to eight times as much as the local mail, and that there were from eight to ten bags of through mail per day. Of the local mail, there was one bag of letters and one bag of papers. He received for carrying the mail about two hundred dollars for each season, and that for the local mail only.

P. Farley. During the seasons of navigation in 1850 and 1851 he carried the mail from the boats to the post office, and from the post office to the boats, daily; and thinks the mail was carried in those years on the steamboats Southerner and Baltimore, from Cleveland to Detroit, and from Detroit to Cleveland. He thinks that the local mail was not more than one-fourth as large as the through mail. The local mail was that which stopped at Cleveland and Detroit; the through mail was that which was destined for points beyond Cleveland on one side, and beyond Detroit on the other.

J. Nelson. During the lake navigation in 1851 and 1853 he was mail carrier at Toledo, and carried the mails from the cars and steamboats to the post office, and from the post office to the cars and boats. In 1851 the line between Toledo and Detroit was formed by the John Owen and the John Hallister, and in 1853 by the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next; and for a short time in 1853 they made the trip both ways in one day. He thinks that the through mail in those years, when carried on the boats, was four times as large as the local.

T. F. Brodhead. He was postmaster at Detroit from the 1st of July, 1853, to the time of making his deposition. The steamer Bay City carried the mail between Detroit and Sandusky from said 1st of July to the 31st of December following. The mail from Toledo to Detroit was carried, for the same time, by the steamer Arrow, and it was understood that, at that time, those boats were owned by the claimants. For the tranportation of the local mail on those steamers he usually paid the captains of the boats. The amount paid for said time was $354 88. Between Sandusky and Detroit the through and local mails were about the same. Between Detroit and Cleveland the through mail, or mail for points beyond Cleveland, was four times greater than the local mail. Between Cleveland and Detroit the through mail was one-fourth as large as the local mail. The mail service of said boats was satisfactorily performed. He paid for delivery

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of local mail at Detroit post office at the rate of one cent per letter, and one half cent for each newspaper. He also paid for packages received and going beyond his office one cent for each package, amounting to fifteen dollars and fifty-three cents for the two quarters ending the 31st of December, 1853.

S. F. Atwood. He was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as managing owners. Between Detroit and Sandusky, and occasionally between Detroit and Cleveland, the Arrow generally ran; and the Bay City did the same in 1853. Before navigation opened to Buffalo, the witness used to run as far as the ice would permit beyond Cleveland. Whilst master of said boats he carried the through and local mail. In said years, except 1853, he carried the through eastern mail before navigation opened to Buffalo, and generally made from three to seven trips, each time carrying the mail both ways, for which no compensation was received, except for delivery of the local mail at Detroit, and sometimes at Cleveland. The largest through mail, for which he received no compensation, was eighty full-sized leather and canvas bags. The through mail, as near as he could estimate it, was three-fourths or four-fifths of the mail carried. · The claimants were the managing owners of the boats Arrow and Bay City. He supposed that the carrying of the through mail on the Southern Michigan railroad commenced in 1853, as there was then a diminution of the through mail by steamboats. He often asked compensation for carrying the through mail, but never received it. The claimants did not receive it, for the captains of the boats only were authorized to receive and receipt for it.

L. W. Martin. He was clerk and steward of the steamboat Southerner in 1850, 1851, and 1852. That boat ran between Detroit and Cleveland in 1850 and 1851, and between Cleveland and Toledo in 1852. Whilst he was on that boat, she carried the through and local mails. The through mail was four or five times larger than the local mail. The boat carried the through mail, for which no compensation was received, to points below Cleveland before navigation was open to Buffalo. She made from three to six trips to such points. He said he could not state particularly the average amount of through mail carried generally, but one mail numbered one hundred and twenty-eight bags.

A. S. Williams. He was postmaster at Detroit in April, 1849, and until July 1, 1853. The Arrow, Bay City, Southerner, and the other boats mentioned in the claimants' petition, carried the mail from Detroit to the points named in the petition. They carried the through as well as the local mails. In May and September, 1849, he wrote to the Post Office Department, at Washington, advising it of claims made by steamboat captains, generally for compensation for carrying the through mails, expressing the opinion that the quantity of through mail was more than double that of the local mail delivered for distribution there, and saying that he thought his estimate would fall far short of the facts. The through mail increased very much from that time till the fall of 1852. He thought the through mail in 1850, 1851, and 1852, was from three to four times greater than the

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local mail. The through mail embraced everything west of that State. He never paid anything for the transportation of the through mail by packet. He acted under the instructions in the office to his predecessor, dated March 26, 1849.

G. D. Baptiste. In 1849, 1851, and 1852, he was on the steamboats Arrow and Southerner together at different times. He was on the Southerner in 1849 and 1852, and on the Baltimore in 1851. Part of his duty was to take care of the mail bags on those boats. The through mail, while he was on the boats, was, at a low estimate, five times larger than the local mail. They once carried a mail, taken on at Erie and left at Toledo, which they estimated at about eight tons.

Lewis Allen. He was assistant postmaster at Detroit from the 1st of May, 1849, to the 1st of October, 1853. From his knowledge there of mails for Chicago and points west, he thought the through mails, brought by the steamboats, were three times larger than the local mail. The steamboats frequently brought through mails as well as local mails.

Daniel P. Bushnell. He was collector of customs at Detroit. Arthur Edwards had been managing owner of the Southerner from 1849. The Bay City was under the managing ownership of Ira Davis and John Owen, or Owen and Davis, from 1852. The Arrow had been in the name of Owen and Davis from 1850 to 1853, inclusive. The Baltimore was registered in 1851 in the name of Howard and Bronson. The John Owen was registered in 1845, and owned by Arthur Edwards and Ira Davis from 1845 to 1853, inclusive. The Southerner ran between Detroit and Cleveland; the Arrow between Detroit and Sandusky; the Baltimore between Detroit and Cleveland; the Bay City between Detroit and Sandusky; the John Owen ran between Detroit and Toledo in 1849, 1850, 1851, 1852, and 1853.

L. W. Martin. The claimants had the control of the steamers Baltimore, Arrow, Southerner, John Owen, and Bay City, from 1849 and 1853, inclusive, during such time as said boats were running, and were entitled to receive compensation for such service. The John Owen was owned by Edwards and Davis, and ran between Detroit and Toledo from the spring of 1849 to the fall of 1852, inclusive. The Southerner was owned and controlled by Arthur Edwards, and ran from Detroit and Buffalo, touching at intermediate ports; from Detroit to Cleveland in 1850 and 1851; between Cleveland and Toledo in 1852. The Baltimore was chartered by Edwards and Davis from the owners for the season of 1851, and ran between Detroit and Cleveland. The Arrow was owned by Edwards and Davis from 1849 to 1853, inclusive, and ran from 1849 to 1852 between Detroit and Sandusky, and in 1853 between Detroit and Toledo. The Bay City was owned by Davis and Owen and Ward (Davis and Owen being the managing owners) in 1853, and ran between Detroit and Sandusky. The said boats carried the through and local mails between the different ports stated in said years during the season of navigation.

H. G. Voice. He was captain of the Baltimore, running between Detroit and Cleveland during the navigation season of 1851, and carried the mail on that boat during that year on every trip. When

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there were six or eight bags of mail, he thought that not more than two of them would be the local mail.

S. F. Atwood. The Arrow and Bay City, mentioned in his previous deposition, commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and ran till the ice stopped them in the fall, which was, on the average, about the 20th of December. They made daily trips over the route (between Sandusky and Detroit) twice each day down, and back every day, except Sunday, and except, also, from four to nine trips early in the spring, when they run to Erie and Buffalo. The mail was carried every day twice over the route, or daily both ways during the season of navigation of those years, (1849 to 1853.)

H. G. Voice. The mails, mentioned in his previous deposition, going west, consisted of those destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east. The mails destined to and marked for Detroit and Cleveland, at each end of the route, he understood as local mails, and those going to points beyond those offices as through mails. In speaking of the bags in his previous deposition, he meant to express the proportion of the local and through mails. The through mail was four times larger than the local mail.

A. S. Johnson. In 1851 he was clerk of the Baltimore. She carried the mail between Detroit and Cleveland daily, commencing at the opening of navigation in the spring, and running till the close of navigation in the fall. He had the general supervision of the mail when brought aboard, and saw it locked up, and, at the end of the route, properly delivered to the agent, who carried it to the post office. His recollection of it was, that the through mails destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

Daniel M. Haskell. He was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853, and attended personally to the duties of the office during said time. The mail was carried between his office and Detroit by the steamers Baltimore and Southerner during 1850, and by the Southerner and St. Louis during 1851. During those years the mail was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail between his office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg, and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukie, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, Washington, and the country south and east of Cleveland. The local mail was but a small proportion of the whole mail carried. From his recollection of it, he should say it was not more than one-tenth of the whole bulk of mail passing over this route. His attention was frequently called to it by the captains of the boats calling on him for pay for the through mail, insisting that it was eight or ten times as much as what they got pay for. He did not pay them for carrying the through mail or any part of it. He paid for carrying the local mail between Cleve-

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land and Detroit at the rate of one cent for letters, and half a cent for papers delivered at his office, to the captains of the boats so bringing such mails. He had no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter and half a cent for a newspaper, which he thinks was a reasonable price; and he thinks it was worth the same price to carry the through mail as the local, according to its relative proportion. The boats above mentioned formed a line between Detroit and Cleveland, running in connection with the railroads at those points, being the only boats on that line during said two years. He sent both the local and through mails over that route by said boats by the instructions of the Post Office Department.

The facts and the law of this case are, in our opinion, as follows:

On the 21st of March, 1849, the Postmaster General instructed the postmasters at the places mentioned in the petition "to make up and forward mails daily between their respective offices in boats," at one cent a letter and half a cent a newspaper, payable where the letters and papers were delivered; and on the 7th of June, 1851, he instructed the postmasters at Sandusky and Toledo to pay the one cent on letters and half cent on papers which were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. In consequence of those instructions, the claimants carried both the through and local mails in steamboats over the routes, and during the periods mentioned in the petition; the through mails being much larger than the local mails. A report from the Post Office Department shows that the claimants were paid by the postmasters at Detroit, Cleveland, Sandusky, Toledo, and Monroe, 10,544 dollars and 95 cents for mail service in the years mentioned in the petition, under said instructions of March 21, 1849, and June 7, 1851, allowing one cent for each letter and half a cent for each newspaper. The claimants applied, in 1854, to the Post Office Department for an additional compensation of 25,180 dollars, but the application was refused. They have now applied to this court for additional compensation, and have increased the demand so as to make it 50,000 dollars.

We have no doubt but that the promises made by the Postmaster General by the said orders of 1849 and 1851 for carrying the mails, whether through or local, or both, have been complied with. For the mails to be sent by the boats, and which were so sent, under said orders, the exact price was fixed by those orders, and the same has been regularly paid. Now, did the Postmaster General make any other contract with the claimants, or authorize any other to be made with them, than those expressed in said orders? It is not proved to our satisfaction that he did. It is true there is a witness, Mr. Harris, a special mail agent, who says that the steamboat captains often objected to receive the through mails, saying that the postmasters refused to pay them except for the local mail; that he requested them to take the mail, assuring them that they would be paid; and he says that, in doing so, he acted under the directions of the Post Office Department. The witness does not state the time when this conversation with the captains took place, nor does he set out the directions under

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which he says he acted. Neither does he say that the directions were given by the Postmaster General; he only says that they were of the Post Office Department. In all this there is too much uncertainty to satisfy us that the Postmaster General gave to the captains, through Mr. Harris, the assurance in question.

This assurance, given by Mr. Harris, was for a *quantum meruit;* that is, not for any particular price, but for what the service of carrying the through mails should be worth. The claimants have referred to an act of Congress that contemplates the giving of such an assurance by the Postmaster General. The 5th section of the act of March 3, 1825, authorizes the Postmaster General to have the mail carried in any steamboat * * * on such terms and conditions as shall be considered expedient; provided, that he does not pay more than three cents for each letter, and more than one half cent for each newspaper conveyed in such mail.—(4 Stat. at Large, 103.) The 14th section of the act of March 3, 1845, authorizes the Postmaster General to contract with the owners or commanders of any steamboat * * * for the transportation of the mail for any length of time or number of trips less than the time for which contracts for transporting the mail of the United States were then usually made under existing laws, and without the previous advertisements then required before entering into such contracts, whenever, in his opinion, the public interest and convenience would be promoted thereby; provided, that the price to be paid for such service should in no case be greater than the average rate paid for such service under the last preceding or then existing regular contract for transporting the mail upon the route he may so for a less time contract for the transportation of the mail upon.—(5 Stat. at Large, 737.) Those provisions have reference to contracts for a specific price, and not to general promises for what the service might be worth.

We have a report relative to this claim, furnished by Mr. Dundas, Second Assistant Postmaster General, in whose office the contracts and directions of the Postmaster General for the transportation of the mails are entered; and we think that report of itself shows that the Postmaster General gave no other directions respecting said transportation of the mails than the orders aforesaid of 1849 and 1851.

We cannot, therefore, say that Mr. Harris' testimony shows any engagement by the Postmaster General upon which the claimants can found this additional claim of 50,000 dollars.

The said report of the Second Assistant Postmaster General, among other things, says:

"During the years 1849, and 1850, and 1851, there were no regular steamboat contracts between Detroit, Cleveland, Toledo, and Sandusky. There were daily land routes which were intended for the great mails, though they appear to have been irregular, and not at all times sufficient for the service. A regular boat line commenced May 19, 1852, between Cleveland and Buffalo, and Buffalo and Detroit, (north shore,) which, no doubt, conveyed the through mails. The boats of Captain Edwards were only employed in common with many others, not under contract, for auxiliary service, under the general instructions to postmasters to employ them and pay one cent a letter and half

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a cent a newspaper, estimated on what are called local mails; which pay was to be in full for all mails, as well through as local. The whole number of boats thus employed during the period embraced in the present claim appears to have been eighty-eight, and the aggregate amount paid them $44,605 21, (including Captain Edwards' boats.) These all conveyed through mails, it is presumed, and all upon the same terms, and compensation they have received must have been regarded, by the department, in full of all their services."

The Postmaster General, Mr. Campbell, in a communication of the 3d of November, 1856, to the assistant solicitor of this court, says:

"In answer to your inquiry as to the practice of the department relative to payments for conveying mails on the lakes, I have to state that, except where regular contracts exist, the pay is adjusted according to the number of letters and papers destined for the port of delivery, constituting the *local mails*, without reference to through mails conveyed at the same time.

"In some cases one cent has been allowed on each *package* of letters *not* for delivery, forming part of the *through* mails; but, with this exception, the parties always understood that the amount allowed for the local mails was to be in full for the *whole* service."

The employment of the claimants for carrying the mails as aforesaid was under the said orders of the Postmaster General of the 21st of March, 1849, and of the 7th of June, 1851; and for the services now sued for, which were performed under that employment, the claimants can be legally entitled to no other compensation than that which those orders authorized. That compensation has been paid to them by the government. They, no doubt, carried in their boats the large through mails, as well as the local mails, during the time the latter were carried by them as aforesaid. But for any compensation for their services beyond what they have received they must depend upon the discretion of Congress.

Our opinion is, that the claimants have no legal cause of action.

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Abstract of the testimony in the case of Arthur Edwards et al. vs. *The United States.*

L. A. PIERCE, captain of the steamer Southerner, testifies as follows:

I was master of the steamer Southerner, running on Lake Erie, between the cities of Cleveland, Ohio, and Detroit, Michigan. I began running said boat as aforesaid the 17th day of March, 1850, and discontinued for the season the 21st day of November following.

The next season I commenced running said boat the 19th day of March, 1851, and discontinued the 20th of November following.

Said boats run daily as aforesaid, carrying the United States mail, through and local, the two seasons. I mean by the local mail, mail which was made up and destined for Detroit, and *vice versa*. By through mail, I mean that which was destined for points and places beyond Detroit on the one side, and Cleveland on the other. I think the through mail would average from six to eight times as much as the local mail. I took care of the mail; it was especially intrusted to my care.

Questions by counsel for the government.

State how many bags of through mail were carried each trip.

Answer. I should judge from eight to ten bags per day.

State how many bags there were of local mail per day.

Answer. There was one bag of letters and one bag of papers.

Question. Did you receive pay for carrying this mail; and if so, how much, and for what portion of it?

Answer. I received about two hundred dollars each season, and that for the local mail only.

PATRICK FARLEY, the mail messenger at Cleveland, testifies as follows:

Question. What was your occupation during the season of navigation of 1850 and 1851?

Answer. I was then carrying the mail between the post office of this city and the boats running on Lake Erie. I superintended the carrying of the mail as aforesaid personally; was myself always present.

Question. How was the mail carried from Cleveland to Detroit, and from Detroit to Cleveland, during the year 1850?

Answer. I think it was carried on the steamers Southerner and Baltimore.

Question. State what boats carried it in 1851.

Answer. I think the same boats.

Question. State in what manner you discharged the duties of mail carrier during those seasons.

Answer. I received the mail on the arrival of the boats and carried it to the post office, and carried the mail from the post office to the boats on their departure, daily, during those two seasons.

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Question. State what proportion of the mail carried by these boats was local and what proportion was through mail.

Answer. The greater proportion was through mail. I think the local mail was not more than one-fourth as large as the through mail. By local mail, I mean that which stopped at Cleveland and Detroit; and by through mail, I mean that which is destined to points beyond Cleveland on one side and Detroit on the other.

S. T. ATWOOD says:

I was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as nanaging owners.

The Arrow generally run between Detroit and Sandusky, and occasionally between Detroit and Cleveland, and the Bay City did the same in 1853.

Question. Did you, while master of these boats, carry the through and local mail?

Answer. I did.

Question. Did you carry the through eastern mail before navigation opened to Buffalo during the years mentioned; and if so, how many trips did you usually make?

Answer. I did in each year, except in 1853, and generally made from three to seven trips each time, carrying the mail both ways, for which no compensation was received, except for delivery of local mail at Detroit, and sometimes at Cleveland.

Question. What was the largest mail you carried of through mail for which you received no compensation?

Answer. Eighty bags; the bags were full-sized leather and canvas bags. The through mail was three-fourths or four-fifths of the mail carried.

Question. Did you receive any compensation for carrying the through mail, or did the owners?

Answer. I did not; often asked for it, but never received it. The claimants did not; for the captains of the boats were only authorized to receive it and receipt for it.

In his second examination, in answer to the question, What time did these boats commence running in the spring, and what time did they lie up in the fall? he says:

They commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and run until the ice stopped them in the fall, which was, on the average, about the 20th of December.

They made daily trips over the route twice each day—down and back every day except Sunday, and excepting also from four to seven early in the spring, when they run to Erie and Buffalo.

Question. How often was the United States mail carried over this route on the said boats during the period last mentioned.

Answer. It was carried every day twice over the route, or daily both ways, during the season of navigation of those years.

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HENRY G. VORCE testifies as follows:

Question. Were you the captain of the steamer Baltimore, running between Detroit and Cleveland during the navigation season of 1851?

Answer. I was.

Question. Did you carry the United States mail on your boat during that year on every trip?

Answer. I did.

In his second examination, in answer to the question, What did this mail consist of? he says:

The mails going west consisted of mails destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east.

The mails destined and marked for Detroit and Cleveland, at each end of the route, I understand as local mail; and mails going to points beyond those offices as through mails.

Question. Can you tell the average number of bags per trip you carried during this season?

Answer. I cannot recollect definitely. I recollect there were frequently as many as twenty bags, or more, and it often occurred there were less; but the average number I cannot state.

Question. How much larger do you mean to be understood was the through mail over this route than the local mail?

Answer. The through mail was four times larger than the local mail.

AUG. S. JOHNSON testifies as follows:

Question. What was your business in the year 1851?

Answer. I was clerk of the steamer Baltimore.

Question. Who had charge of the mails aboard of your boat?

Answer. I considered myself responsible for the proper care of the mail, and did have the general supervision of it; and when it was brought aboard I saw it was locked up, and at the end of the route properly delivered to the agent, who carried it to the post office. I often handled it myself, and saw to its being put into the mail room and locked up when it would hold it all.

Question. Do you remember what proportion of the mail so carried was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried over this route. My recollection of it is, that the through mails, destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

J. R. NELSON, mail messenger at Toledo, testifies as follows:

Question. What was your business during the season of lake navigation in the years 1851 and 1853?

Answer. Carrying the mail to and from the steamboats and post office in 1851; in 1853 I carried the mails to and from steamboats, railroad, and post office. I attended at the cars and steamboats with the necessary means of conveyance to take the mails, as they arrived,

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to the post office, and in turn took the mails from the post office to the cars and boats.

Question. In what manner was the mail carried between Toledo and Detroit during the season of lake navigation in the years 1851 and 1853?

Answer. By steamboats. I cannot tell what years particular boats ran. Upon examination I find that the steamers John Owen and John Hollister formed the line in 1851. In 1853 the line was composed of the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next.

Question. What proportion of the mails carried on these boats during these years over this route was local and what through mails?

Answer. It is hard for me to tell how much local mail there was, but I should think the through mail, when carried on these boats, was four times as large as the local.

L. W. BEEBE testifies as follows:

Question. What was your business from September, 1849, to July, 1855, inclusive?

Answer. My occupation was that of baggage-master at the Michigan Central depot at Detroit, and depot mail agent and messenger of the Post Office Department at that city. I carried all the mails that were carried except the mail to Pontiac, and such as went by stages from and to the post office, to and from the cars and steamboats, &c.

Question. In what manner did you attend to said business as deputy mail agent, and perform the duties of said office, during the time last mentioned?

Answer. I generally attended personally upon the arrival and departure of the several boats and cars running to and from Detroit, receiving and delivering said mails personally, and assorting and separating the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, and delivering such local mails to the Detroit post office, and sending the through mails on by cars and boats towards their destination. The local mail for the Detroit post office was delivered immediately to the post office, and the through mails were generally taken directly from boats to cars and from cars to boats.

Question. What proportion of the said mail matter coming to and passing through Detroit was local mail, and what through mail?

Answer. The through mail was five or six times larger than the local mail; that is to say, it was on an average five or six times larger, for at some times it was not so large, but at others a great deal larger.

Question. What boats, carrying the mails, ran between Cleveland and Detroit, Sandusky and Detroit, Toledo and Detroit, from the years 1849 to 1854? How long did each boat run, and who was the reputed owner or owners?

Answer. The Southerner commenced running in the fall of 1849, and continued running until the close of the navigation between Detroit and Cleveland; she commenced running again in the spring of 1850 with the Baltimore. The two boats made daily trips between De-

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troit and Cleveland. Both boats were owned by Arthur Edwards, and carried the mails daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route with the St. Louis, going down one day and back the next. The St. Louis was owned by Capt. Ward, and the Southerner by Capt. Edwards. On the Sandusky and Detroit route the Arrow ran, and made daily trips. She was owned by Arthur Edwards. This was during the years 1849, 1850, 1851, and 1852, and part of the year 1853, and which time the steamer Bay City took her place. On the Toledo and Detroit route the John Owen ran in part of 1849, the whole of 1850, 1851, and 1852, and part of 1853. During this time she carried the mails every other day. She was owned by Arthur Edwards. The boats on this line did not carry the mail all of this time, but only during a portion of the years above mentioned; I won't be positive as to the time.

A. C. HARRIS testifies and says: From July, 1850, to March, 1853, I was acting as a special agent of the Post Office Department.

Question. What were the duties of your office?

Answer. Attending to the transportation of the mails, and other duties assigned by the department.

Question. In what districts did your duties require your attention?

Answer. Mainly in Ohio and Michigan.

Question. In attending to the duties of your office, did you often pass over the route from Cleveland to Detroit, Sandusky to Detroit, and Detroit to Toledo, by steamboat, during the period last mentioned, having the mails in charge?

Answer. I did pass very often over those routes during that period, and always gave more or less attention to the mails.

Question. What amount of the mail conveyed over these routes was through mail, and what local mail?

Answer. I think that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth.

Question. What do you understand by the terms through and local mails?

Answer. The local mail is that which is destined to the post office at end of the route, to be opened there. The through mail is that which is destined to points beyond such offices.

Question. How was the mail carried over the above-mentioned routes during the period last mentioned?

Answer. On the Cleveland and Detroit route they were carried by the steamers Southerner and Baltimore during 1850 and 1851; by the steamers Arrow and Bay City on the Sandusky and Detroit route during the time of my service as such agent, between Toledo and Detroit by the Arrow and Owen.

Question. By whose direction were those mails put aboard of the several boats running over the routes above mentioned?

Answer. By the direction of the postmasters generally, and sometimes by my direction.

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Question. Under what circumstances, and by what authority, did you direct the mails to be carried by these boats?

Answer. The circumstances were that the captains often objected to receiving the great through mails, saying that the postmasters refused to pay them anything, except for the local mails, and as they got nothing for it they would not carry it, unless I would undertake to see them paid. I requested them to take the mail aboard, and assured them that they would be paid for the service, and in so doing I acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of the cars by the time of leaving. In such cases I often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half hour to an hour and a half.

L. W. MARTIN testifies as follows:

Question. Were you in the employ of the claimants in the years 1850, 1851, and 1852?

Answer. I was.

Question. In what capacity?

Answer. As clerk and steward of the steamer Southerner.

Question. Between what points did the steamboat Southerner run?

Answer. She ran between Detroit and Cleveland in 1850 and 1851, and between Detroit and Toledo in 1852.

Question. Did she carry the through and local mails while you were on the boat?

Answer. She did.

Question. Was it part of your duty to receive and deliver the mails at the points at which the boats touched?

Answer. It was.

Question. What proportion should you think, from your observation, would the through mail bear to the local?

Answer. The through mail was four or five times larger than the local.

Question. Did your boat carry the through mail for which no compensation was received before navigation was open to Buffalo to points below Cleveland?

Answer. She did.

Question. How many trips did she make?

Answer. She made three to six.

Question. What was the average amount of through mail carried generally?

Answer. I can't state particularly, but one mail numbered 128 bags, which I counted myself.

Question. Were the claimants in this suit the managing owners of the Baltimore, Arrow, Southerner, John Owen, and Bay City, between the years 1849 and 1853?

Answer. They had the control of those boats from 1849 to 1853 inclusive, during such time as they were running, and were the persons entitled to receive compensation for such service.

The John Owen was owned by Edwards and Davis, and ran between Detroit and Toledo from the spring of 1849 to the fall of 1852, inclusive.

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The steamer Southerner was owned and controlled by Arthur Edwards, and ran from the ports of Detroit and Cleveland in 1850 and 1851.

The steamboat Baltimore was chartered by Edwards and Davis from the owners for the season of 1851, and ran between Detroit and Cleveland.

The steamboat Arrow was owned by Edwards and Davis from 1849 to 1853, inclusive, and ran in 1849 to 1852 between Detroit and Sandusky; in 1853 between Detroit and Toledo.

The Bay City was owned by Davis and Owen, and ran between Detroit and Sandusky in 1853.

Question. Did the aforesaid boats carry the through and local mails between the different ports stated, during the years aforesaid, during the season of navigation?

Answer. They did.

A. S. WILLIAMS testifies as follows:

Question. When were you first in possession of the post office at Detroit, and until when were you postmaster?

Answer. In April, 1849, and until July 1, 1853.

Question. What boats carried the mails from here to the points named in the petition of the claimants?

Answer. The Arrow, Bay City, Southerner, and other boats, mentioned in the petition of claimants.

Question. Did they carry the through mail as well as the local?

Answer. They did.

Question. From your knowledge of the business, what proportion did the through mails bear to the local mails?

Answer. By reference to my letter book I find I wrote the Post Office Department, at Washington, in May, 1849, and September, 1849, advising them of claims made by steamboat captains generally for compensation for carrying through mails, and then expressed the opinion that the through mail was more than double the local mail delivered for distribution here, and that I thought my estimate would fall far short of the facts.

Question. Did the through mail increase much from that time till the fall of 1852?

Answer. It did.

Question. What proportion do you think the through mail bore to the local mail in 1850, 1851, and 1852?

Answer. I should think the through mail was from three to four times greater than the local. The through mail embraced everything of this State.

Question. Did you ever pay for the transportation of the through mail by packet?

Answer. I did not.

Question. At what time did you receive instructions from the department for paying for the mail brought by steamers?

Answer. I found, on taking possession of the office, in April, 1849, instructions to my predecessor, dated March 26, 1849, under which I acted.

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GEORGE D. BAPTIST testified as follows:

In the years 1849, 1851, and 1852 I was on the steamboats Arrow and Southerner together at different times; I was on the Southerner in 1849 and 1852; on the Baltimore in 1851.

Question. Was it part of your duty to receive and take care of the mail bags on board of those boats?

Answer. It was.

Question. From your knowledge, what proportion did the through mails bear to the local mails, averaging the whole time you were on these boats?

Answer. At a low estimate the through mail was five times larger than the local mail. We once carried a mail which we estimated at about eight tons; we took it on at Erie and left it at Toledo.

D. D. BEBEE testifies:

In 1852 I resided at Cleveland, Ohio, and was clerk in the Cleveland post office. I think the through mail was at least twenty times larger than the local mail (during the year 1852.) The through mail was much more bulky than the local, and far more trouble to handle.

JAMES WELCH deposes:

I was clerk in the Cleveland post office during the years 1851 and 1852.

Question. What were your duties as such clerk?

Answer. They consisted mainly in distributing the mails and assorting and delivering the same to the mail carrier, who carried the mails between the steamboats and cars and the post office.

Question. How were the mails carried between Cleveland and Detroit during these years?

Answer. By steamboats running daily.

Question. What did the main bulk of the mail carried over that route during those years consist of?

Answer. The mail going east consisted mainly of the through mails, destined for Pittsburg, Baltimore, Washington, Columbus, Cincinnati; and going west, of matter from those and other offices going to Chicago and other offices west, together with the local mail between Detroit and Cleveland post offices.

Question. What was the relative amount of local and through mails carried over the said route from Cleveland to Detroit?

Answer. From my recollection of it, I think the through mail, so carried over this route, was in bulk from ten to fifteen times as large as the local mail. I think it safe to say that, on an average, it was ten times as large as the local mail.

Question. What were your means of knowing the relative proportion between the local and through mails?

Answer. I was in the habit of handling the mails with my own hands, in delivering it to the mail carrier and in separating it on its arrival, for opening the local mails for delivery.

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DANIEL M. HASKELL deposes:

I was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853.

Question. Did you attend personally to the duties of your office during said time?

Answer. I did. It (the mail) was carried by the steamers Baltimore and Southerner during 1850, and the Southerner and St. Louis during 1851.

Question. How often was the mail carried over this route during these years, and what mail was so carried?

Answer. It was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail, between my office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg, and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukie, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, and Washington, and the country south and east of Cleveland.

Question. What proportion of this mail, passing over this route, was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried. From my recollection of it, I should say it was not more than one-tenth of the whole bulk of mail passing over this route. My attention was frequently called to it by the captains of the boats calling on me to pay for the through mail, insisting that it was eight or ten times as much as what they got pay for.

Question. Did you pay them for carrying the through mail, or any part of it?

Answer. I did not. I paid for carrying the local mail between Cleveland and Detroit at the rate of one cent per letter, and half a cent for papers, delivered at my office, to the captains of the boats so bringing such mails.

Question. From your knowledge of the amount of mail passing over this route, what would be a reasonable compensation for carrying the great through mail upon the steamboats over this route?

Answer. I have no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter, and half a cent for a newspaper, which, I think, was a reasonable price; and I think it was worth the same price to carry the through mail as the local, according to its relative proportion.

Question. Did the boats above mentioned run in connection with the railroads terminating at Cleveland and Detroit?

Answer. They did form a line between Detroit and Cleveland, running in connection with the railroads at those points, being the only boats on that line during said two years.

Question. Did you send both the local and through mails over that route by said boats by the instructions of the Post Office Department?

Answer. I did.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1860.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 117.]

The Committee on Claims, to whom was referred the memorial of Dona Guadalupe Estudillo de Arguello, have had the same under consideration, and thereupon report:

This case was considered by the Committee on Claims at the 1st session of the 32d Congress, and a favorable report was made thereon, accompanied by a bill. This bill passed the Senate, but was not acted on in the House of Representatives.

Subsequently the case was submitted to the "board for the examination of claims contracted in California under Colonel Frémont," who gave the following opinion thereon, to wit:

"This claim, purporting to be for property taken by the Mexican troops, does not appear to come within the province of the board for examination; but from the peculiar circumstances of the case, as set forth in the documents accompanying it, the board desire to call the attention of Congress to the claim as one worthy of its favorable consideration."

The case was again considered by the Senate's Committee on Claims at the 1st session of the 34th Congress, and the following report and bill were reported to the Senate.

IN SENATE, *March* 23, 1852.

Mr. BRODHEAD made the following report:

The Committee on Claims, to whom was referred the petition of Santiago E. Arguello, report:

The petitioner was a wealthy and influential inhabitant of California, residing in the vicinity of San Diego. On the invasion of that country during the Mexican war, and on the appearance of the proclamation of Commodore Stockton, then in command of that division of the American forces, Arguello placed himself at the head of a company

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raised through his influence and exertions, and immediately joined the United States forces, and fought with distinguished bravery and effect in several actions, under the command of Commodore Stockton, who fully attests his gallantry and the importance of his services.

On the 25th November, 1846, he was appointed by Governor Stockton a captain of riflemen in the California battalion, and, on the 16th January, 1847, a member of the legislative council of that Territory.

In consequence of his attachment to the cause of the United States, and the zeal and activity which he manifested in their service, his *rancho* was ravaged and laid waste, his buildings burnt, and his cattle and other movable effects taken away by the enemy, by which he appears to have been reduced from competence and wealth to penury and dependence.

A commission, appointed by H. Fitch, esq., alcalde of San Diego, to examine and report upon the losses of Arguello, state, under oath, and after a personal examination, that the personal property thus destroyed by the enemy amounted, "at the lowest value," to $14,888. The items are as follows:

472 tanned deer skins, at $2	$944
24 tanned cow hides, at $6	144
20 mares, at $10	200
500 head of cattle, at $20	10,000
250 sheep, at $4	1,000
42 horses, at $50	2,100
100 pigs, at $5	500
Total	14,888

These prices of the horses and cattle may have been somewhat enhanced by the demand growing out of the military operations; and the committee have therefore deemed it proper to reduce the valuation of the horses from fifty dollars to thirty dollars each, and of the cattle from twenty dollars to fifteen dollars a head, reducing the total amount to $11,548, which sum the committee think should be paid.

On leaving California, Governor Stockton, who rendered such valuable, important, and arduous service in that then distant and almost unknown Territory, addressed a communication to Arguello, in which, after acknowledging his services, sacrifices, and losses, he says: "I hope—nay, I have not the least doubt but that the losses which you have sustained will be reimbursed by the government of the United States."

The annexed letter of Commodore Stockton, in answer to inquiries from the committee, is made a part of this report, and referred to as containing a very satisfactory statement of the important services of Mr. Arguello, and of the nature and extent of his losses; and in view of all the circumstances, it is deemed to be the dictate of sound policy, as well as of justice and equity, that he should be protected, at least to the extent proposed in the accompanying bill, from the ruinous losses resulting solely from his devotion to the honor and interests of this government.

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The policy of the United States in remunerating those who have testified attachment to our cause and our institutions, by forsaking the cause of an enemy and risking their lives and property in our service, was sanctioned by the early action of the government. In 1818, a committee of the House of Representatives made a report on a claim of this nature, in which they say: "If the liberal policy heretofore pursued by the United States is continued, it would not require much calculation to predict its effects, in the event of another contest." The Senate Committee on Claims, at the second session of the twenty-first Congress, in their report (No. 30) in the case of John Daly, a Canadian refugee, adopt the same principle, and recommend relief, which was granted to the amount of five thousand dollars, "for supplies furnished and assistance rendered to the army of the United States in Canada," &c.

In accordance with these views, the committee report a bill and recommend its passage.

WASHINGTON, *March* 5, 1852.

SIR: I have received your letter of February 13, ultimo, requesting me "to state" my "personal knowledge of the facts set forth in the petition of Santiago E. Arguello," and also my "opinion in regard to the propriety of paying the whole or any part of his claim."

In answer to your inquiries I reply, that I have no doubt of the truth of the facts on which the claim of Santiago E. Arguello is founded. The losses which he sustained in consequence of his adhesion to the American cause were great, and, in my estimation, would not be overpaid by giving him the sum of $14,888. His services were most meritorious. He served gallantly under me during my campaigns in California, and it would be no more than justice that he should receive the full amount of his claim. In justification of this opinion, I must add:

1st. Don Santiago E. Arguello was one of the first, after my proclamation, to espouse the American cause, and take up arms in its defence.

2d. He assisted in taking and holding San Diego under the American flag.

3d. He raised a company and served under me during the whole campaign.

4th. He fought most gallantly, side by side with me in every battle, always distinguished.

5th. By his enterprise and boldness he contributed, more than any one else, to supply me with cattle and animals for transportation purposes.

6th. He exercised a powerful and salutary influence in harmonizing and reconciling the Californians to the change of flag.

7th. His family were driven from their home; his house pillaged and burnt; his numerous flocks and herds destroyed; his peons scattered and driven off; his inclosures and growing crops wantonly laid waste; and not a vestige of his perishable property left. Thus, at the

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end of the war he found himself rich in honors, but a houseless, and homeless, and poverty-stricken man.

Permit me further to say, that you will see, by reference to bill No. 8, of the Senate, that if that bill should become a law, it will not cover the case of Don Santiago E. Arguello, but that special legislation will be required for his indemnification.

Yours, respectfully,

R. F. STOCKTON.

Hon. RICHARD BRODHEAD,
Chairman of Senate Committee on Claims.

It will be observed that, in the above report, the committee deemed it proper to reduce, to some extent, the value placed upon the horses and cattle by the commission, under the impression that the prices might have been enhanced by the demand growing out of the military operations; but, in consequence of the long delay to which the claimant has been subjected in obtaining payment for his property, the present committee are of opinion that the full amount of the award ought to be allowed. They therefore report a bill in accordance with these views, and recommend its passage.

A letter from the widow of the petitioner, together with one from Major R. B. Lee, United States army, on file with the papers, show that he died in California on the 20th of October, 1857, leaving his widow and several children in poverty. The following is Major Lee's letter:

SAN FRANCISCO, *December* 3, 1857.

SIR: I have the honor herewith to inclose a letter and its interpretation, received from the widow of Don Santiago E. Arguello, announcing his death on the 20th of October. This letter I request may be read to your honorable committee and to the Senate, and then placed on file with the documents and evidence accompanying his claim, so just and so long, and to his interests ruinously, delayed. The vast possessions of this unfortunate man had passed from him. He died poor and in debt, leaving his estimable widow and numerous female children friendless, destitute, in abject poverty, and dependent upon the cold charity of the world. The honest and just claim of the deceased, his patriotism, his gallant and important services to the country of his adoption, his unbounded hospitality and generosity to our starving emigrants in their hour of need, his sufferings and self-sacrificing losses, are so fully substantiated and set forth in the documents before your committee that I deem it unnecessary to enter into their recital.

His claim was *twice* passed favorably by the board of officers instituted by law to investigate Frémont California claims, and, I believe, *thrice* passed by the Senate, without a dissenting voice; on the two first occasions the bills for his relief having been reported by Senator Bayard, and on the last by Senator Brodhead.

To prevent this last remnant of his estate falling into the hands of uncompromising creditors and expectant extortioners, and by the advice of his nearest friends, and in accordance with the wishes of his widow, communicated to me by them, I am induced, as the only means

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of rendering the proceeds available to the necessities of his family, to ask that a bill be reported in the name of the widow for her sole use and benefit.

His widow (Doña Señora "Guadalupe Estudillo de Arguello") is a noble-minded woman, beloved, respected and honored by all who know her, and in adversity as in prosperity remains a model of all the virtues that dignify and adorn the name of woman.

I have no interest in this claim whatever, and am influenced alone by knowledge of the facts and circumstances, and from a sense of feeling and humanity.

It would be very gratifying to me, sir, to receive your acknowledgment of this communication, and to be permitted to communicate to the family the consolation of your assurances that in the absorbing legislation of the next Congress the claims of the destitute widow and orphans will not be forgotten.

I am, sir, with much respect, your obedient servant,

R. B. LEE,
Major United States Army.

Hon. CHAIRMAN OF COMMITTEE ON CLAIMS,
United States Senate.

The following letter is from Commander Minor, United States navy, who served with Arguello in the conquest of California:

WASHINGTON CITY, *December* 18, 1852.

SIR: In answer to your inquiries regarding the knowledge I possess of the services and losses of Santiago E. Arguello, of San Diego, California, I have to state that I knew him well, and esteemed him highly; that I was associated with him on duty for upwards of six months; that during the period of the conquests of California he rendered important services to the United States, and that in consequence thereof he sustained great losses, reducing him from comparative wealth and affluence to comparative poverty and want, as I will briefly explain:

In October, 1846, Santiago E. Arguello was one of that gallant band of fifty-five volunteers, under Captain Merritt, who successfully defended San Diego against the almost daily attacks of quadruple their number of well armed Mexicans. In transferring his command Merritt spoke in high terms of Arguello. He said that he had ever been amongst the foremost to repel the assaults made upon the garrison; that through his exertions, and from his rancho, were derived the supply of food necessary for their support. In making an attack upon and capturing the only piece of artillery in possession of the enemy Arguello was conspicuously brave, and though wounded in the affair, had it not revealed itself, his wounds would have been unknown. His zeal in our behalf rendered him the especial object of the hatred of the Mexicans, and they determined to inflict upon him a summary vengeance by carrying into captivity his wife and children, driving off his herds and peons, and destroying the buildings upon his rancho. Timely information frustrated a portion of their designs. His family

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of females and young children were embarked in boats sent to transport them to San Diego, but everything that was left that was capable of destruction was destroyed with an unwarrantable barbarity. His houses burnt, his peons dispersed, and his herds driven to a distant part of the country.

In addition to this Arguello sustained another loss by the United States force occupying as a barracks and fortifying his town residence in San Diego. It was deemed necessary to make loop holes in the walls for musketry, to break down a portion of the wall of the inclosure, to make embrasures for artillery, and to dig a ditch surrounding the whole. The fencing of his large garden was used for fuel, the furniture of the house materially injured, and after it was vacated by our men it was scarcely habitable. During these and other sad reverses of fortune, he did not abate one iota of his zeal in our cause. Two expeditions were fitted out and sent ninety miles to the south to procure provisions and animals to conduct the war, as well as to protect persons friendly to our side. Both were successful; and a large portion of that success is due to the knowledge, influence, and zeal, exerted by Arguello.

I believe you have been informed of the distinguished part which Arguello, took in the subsequent campaign, of his gallantry in the battle of the 8th and 9th of January, 1847, and of his untiring fidelity to the conclusion of the war. It may not be improper for me to say that he was ever near the person of Commodore Stockton; that he obtained his confidence as well as the respect of the officers of the navy and army; that he was a firm and patriotic friend of our country, and a gallant supporter and defender of its flag.

It is true he has lost his all; but a murmur has never passed his lips. He patiently awaits the justice that Congress will ultimately award him, which will restore him a portion of the fortune which he lost in aiding the American forces in the conquest of California.

Wishing you all success in your disinterested efforts in behalf of this unfortunate but most worthy man, with high respect, I remain, very truly, yours,

GEORGE MINOR,
Lieutenant United States Navy.

Major RICHARD LEE,
United States Army, Washington City.

From all the evidence in the case, your committee find that Arguello was a wealthy and distinguished Californian, and that when the American forces entered that portion of Mexico, he was the first man to join its standard.

That he raised and equipped, at his own expense, a mounted troop of his countrymen, which troop fought with Stockton throughout the war.

That he assisted in assaulting and capturing San Diego, and was one of the fifty men who successfully maintained its possession against a quadruple force.

That he fought in every battle by the side of Stockton, and always with distinguished gallantry.

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That by his enterprise and boldness he contributed more than any one else to supply the American forces with cattle and animals for transportation purposes.

That he exercised a powerful influence in reconciling Californians to the change of flag.

That the American forces were in part supplied with food from his cattle, taken from his rancho, and through his own exertions. That the American forces took possession of his dwelling-house, in San Diego, fortified and occupied it as a barrack, piercing its walls for musketry, removing a portion of its inclosing walls for artillery, and to dig a ditch around the whole; the fencing around the whole being used for fuel.

Under these circumstances of the case, your committee deem that sound policy no less than equity dictates relief, and they report a bill accordingly.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1860.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 118.]

The Committee on Claims, to whom was referred the case of David Myerle, reported from the Court of Claims, unanimously report:

The claim was first presented to the Senate by the memorial of the claimant at the 1st session of the 28th Congress, and has been continuously prosecuted to this time.

The nature of the claim is shown by the evidence taken before the Court of Claims, and which is briefly recited in the decision of the court as showing the nature of the arrangement made by Mr. Paulding, in 1839, as Secretary of the Navy.

Mr. Paulding states, that while he was at the head of the Navy Department the claimant called on him with reference to certain improvements he had made in the machinery for manufacturing cordage; that, perceiving the claimant to be an intelligent and enterprising man, he suggested to him that it might be advantageous to him to engage in the business of water-rotting hemp; and that the claimant stated, that although he did not believe the occupation to be dangerous to those engaged in it, yet, being then engaged in a profitable business, he was unwilling to relinquish it for one which he foresaw would be attended with almost insurmountable obstacles, and a failure in which would involve him in great pecuniary loss. *The Secretary then assured the claimant that the department would take care that he should be recompensed for any loss he might ultimately sustain in consequence of a failure of the experiment; and he states that he made* this promise solely in the hope of being instrumental in conferring a great benefit on his country, and under a full conviction that if he remained in office he would redeem his pledge, without transcending his powers or violating any existing law. He says, further, that the claimant, being influenced, as he believes, by these assurances, as well as by motives of patriotism, acceded to his proposition, and a contract was entered into with him for two hundred tons of American water-rotted hemp; that the claimant made no application for a contract; that the proposal came from the Secretary; that no advertisements for proposals were issued, nor was any security demanded for the fulfillment of the contract, as the whole affair

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was considesed as an experiment, made with a view to settle a question of great national importance. Mr. Paulding says, also, that his object was to remove the prejudice against the process of water-rotting, and demonstrate the practicability of producing a domestic article equal to the first quality of Russian hemp.

The claim is based upon the grounds, 1st. That the hemp delivered by him at Boston, under the contracts, was improperly rejected, whereby the enterprise, which promised remuneration, was converted into the means of his ruin; and 2d. Upon the promise of indemnity against loss made by the Secretary of the Navy.

Upon both of these grounds the Court of Claims decided against the claimant, holding that there was no legal liability which could be enforced in that court against the government, as the act of 3d March, 1809, provides that "all purchases and contracts for supplies or services which are or may, according to law, be made by or under the direction of either the Secretary of the Treasury, the Secretary of War, or the Secretary of the Navy, shall be made either by open purchase or by previously advertising for proposals respecting the same."

The court while, however, deciding against the legal liability of the government, thought, from the peculiar circumstances of the case, that they should lay the facts before Congress, with the remark that "the evidence tends to show that an active and enterprising man of business became embarrassed in his circumstances, and was deprived of the just and fair profits of an honest occupation by his efforts to promote a matter of national concern," and they therefore submit "the whole matter to the consideration of Congress for such action as they, under all the circumstances, shall consider just and equitable."

The committee are of opinion that it is both just and equitable, under the circumstances of the case, that the applicant should receive compensation.

In reference to the contract for and the delivery of hemp, Mr. Paulding states, in his letter of 4th January, 1853:

"In all the testimonials I have given in behalf of your claim, I was governed by no papers or representations of yours. I stated facts, and only such facts as were known to myself, and many of them notorious to the public. I stated, in the first place, that it had long been the wish of the government to procure a supply of American water-rotted hemp for the consumption of the navy, in order that the country might be independent of foreign nations, especially in time of war; but that all efforts had been unsuccessful, principally on the score of its being universally considered in the West an unhealthy occupation, fatal to the slaves who would be principally employed in the business.

"I stated that, in consequence of my solicitations and encouragement, you were unwillingly induced to undertake this most important business, and that, accordingly, a contract was entered into for the supply of several hundred tons of American water-rotted hemp.

"I stated that, after surmounting great obstacles, you at length succeeded so far as to deliver a large supply of American water-rotted hemp at the Boston navy yard, which, being tested with the best Russia, proved considerably stronger, but was rejected by the inspectors on the frivolous pretext that it was not quite so clean; and I now

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state that the late Commodore Nicholson, who afterwards commanded at Boston, has since assured me that corrupt means were used to induce the inspectors to come to that decision.

"I further stated, what was already sufficiently notorious, that in consequence of your success in the production of water-rotted hemp, and the proof thus afforded that it was not an unhealthy occupation, others had entered upon it, insomuch that the naval and commercial marine of the United States are in a great measure supplied with American water-rotted hemp, and no longer dependent on foreign nations for an article so indispensable.

"All this I stated from my own knowledge, and not from your papers and representations; and consequently, thus far, there was no deception on your part.

"With regard to your pecuniary circumstances at that time, I said nothing, because I knew nothing, and did not think it had the slightest connection with the justice of your claim. I had a great national purpose in view, and I found in you a man ready to undertake its accomplishment; if you succeeded, the country would be greatly benefited; if you failed, it would be just where it was before. No advances of money were required, and no injury to the public interest could occur from your failure, as the department had then on hand a supply of Russian hemp for two years, if I recollect aright; at any rate, for a very considerable period.

"There was no deception here. Whether solvent or not solvent at the time you entered on the contract are of no consequence to me or the country, provided you succeeded in your undertaking; and with unfeigned respect for Congress, I do not perceive how the decision of this question can affect the justice of your claim in the slightest degree; that is a private affair between you and your creditors.

"The facts I have stated, and which are notoriously true, sufficiently prove that you were the principal instrument in conferring a great benefit on your country; whether rich or poor when you began is of little consequence to any one but yourself. It is sufficient to know that you are now poor, and that this poverty is clearly owing to the improper rejection of your hemp at Boston, which effectually arrested all future efforts, and was sufficient to ruin your affairs. Nothing is more common for men to commence business, or enter on great undertakings, on borrowed capital, and to take the risk of success or failure. Nor, however I may disapprove of such a course, do I think justice should be denied them, because, perhaps, the loss may fall on others. If any other person or persons have a legal claim in any portion of the anticipated bounty of Congress, it seems to me it should be decided by a court of judicature, not by Congress.

"I do not know whether you lost any money by your contract, or whether you had any to loose; but this I know, that you spent years of your life, and encountered a series of labors, obstacles, and discouragement, in prosecuting your undertaking, which deserve some remuneration, and that for the last seven or eight years you have been condemned to a purgatory of cares, anxieties, losses, and disappointments, which I would not have endured for ten times the sum you may receive from the justice or the bounty of Congress."

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The damage claimed by Myerle for the rejection of his hemp, as shown by the statement in the report from the Court, page 44, is $65,000, being the difference between $150,000, the contract price for 500 tons, and the cost delivered at Boston of $85,000.

There is a good deal of other evidence in the record, as to whether the hemp was or was not properly rejected; but in the view taken of the case by the Court, in which the committee concurs, it is not necessary to go into the details, and it is only here referred to as one of the items which enter into consideration in the judgement to which the committee have arrived.

It is shown also by the evidence that the rejection of this hemp not only deprived the claimant of the profit which had been anticipated by the contract, but produced overwhelming embarrassment in his pecuniary affairs. At the time he undertook this experiment he appears to have been a man of means, extensively and prosperously engaged in the rope business. His devotion and zeal in the prosecution of the business of water-rotting hemp, under the engagement with the Secretary of the Navy, together with the rejection of his hemp, reduced him to poverty.

In a letter from Secretary Badger, dated Navy Department, May 10, 1841, addressed to Mr. Myerle, he says: "The patriotic spirit which prompted you to the great undertaking in which you are now employed, and the perseverance with which you have prosecuted it, deserve and have the commendation of the department."

The committee find that this experiment was not only prosecuted with great zeal and perseverance, but that it was also conducted to a successful result, promotive of great advantage to the best interests of the country.

On this point there is abundance of proof, but it is not deemed essential to do more than to extract the following:

Willis Stuart, of Louisville, Kentucky, says, in his letter dated November 10, 1845: "I hope that Congress will yet do you justice, as you have certainly lost the last six or seven years in endeavoring to confer a great benefit on your country, and in which you have certainly succeeded. It is said that republics are ungrateful, and they doubtless are so in many instances; yet a distinguished statesman of our day has said: 'Truth was omnipotent and public justice certain;' and I hope that you will yet be amply rewarded for all your toils and sacrifices."

In the letter of Mr. Buchanan, dated Wheatland, September 2, 1850, he says: "When you undertook the task of instructing the hemp growers of the west the art of water-rotting hemp in such a manner as to render it a healthy employment, and had entered into a contract with the Secretary of the Navy to furnish the department with a quantity of the article, I felt a lively interest in your success. This induced me to watch your progress with much solicitude. I had many conversations with you on the subject. *The result of your labors has been a great benefit to the country. We now have an ample supply of an article necessary for self-defense*, whilst its cultivation has been and will continue to be a source of profit to many of our agriculturists."

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Again, in a letter from the same gentleman, dated London, December 14, 1855, he writes: "I am truly sorry my recollection does not serve me in this particular, because I espoused your cause *from a sincere conviction that it was just.*"

In the report of Secretary Mason, dated December 4, 1848, it is stated: "The supply of hemp on hand, and deliverable under contracts already existing, render it unnecessary to advertise for any additional quantity for the present year. *That American hemp can be prepared in quality equal to any in the world has been established by experiments under the most rigid tests.*"

These extracts, together with the statement of Mr. Paulding, heretofore quoted, are sufficient to show that the country has gained great advantage from the services of Mr. Myerle, and as these were performed under an agreement, made *bona fide* with the Secretary of the Navy, it is but just, in the opinion of the committee, that some compensation should be made therefor, though it may be admitted that the law did not authorize the Secretary to bind the government by such an agreement.

The committee has traced the history of this claim in the two Houses of Congress since its first presentation, and find that during the 29th, 30th, 32d, and 33d Congresses, six times have bills been reported in favor of the applicant in the Senate, and during the same period, seven times in the House of Representatives. That, in the 30th and 33d Congresses, the bills passed the Senate, and that, in the 29th, 30th and 32d Congresses the bills passed the House three several times.

The committee has looked to these bills as some evidence of the opinion of Congress as to the amount which should be allowed the claimant. The sum stated in the bills which passed the Senate in the 33d Congress, and the House the 2d session of 32d Congress, is $30,000, with interest from 1st January, 1850. The committee does not regard this as equivalent to the damages claimed by Myerle, but as those damages do not arise under any binding contract with the government, they adopt the amount which those bills would give, as the nearest approximation to an equitable allowance as the evidence of the case would seem to authorize.

The committee report a bill and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1860.—Ordered to be printed.

Mr. SAULSBURY made the following

REPORT.

[To accompany Bill S. 120.]

The Committee on Pensions, to whom was referred the petition of William Wallace, praying an increase of pension, beg leave to report:

That it appears the petitioner was allowed a pension under a special act of February 13, 1855, at the rate of $6 per month from the 4th March, 1854, for three-fourths disability. He now furnishes satisfactory evidence showing that his disability is total, and prays that his pension may be increased accordingly. His pension having been granted by a "special" act, Congress only have the power to grant an increase. The proof of total disability in this case is satisfactory.

The committee therefore report a bill for his relief and recommend its passage.

The petitioner also prays for arrears of pension from the 25th July, 1814, when he claims to have been wounded, to the 4th March, 1854, when his pension commenced.

Under the general statutes invalid pensions commence only from the completion of the evidence. The committee report adversely to this portion of the prayer of the petitioner.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1860.—Ordered to be printed.

Mr. POWELL made the following

REPORT.

[To accompany Bill S. 124.]

The Committee on Pensions, to whom was referred the petition of Nancy M. Gunsally, formerly widow of Lyman M. Richmond, deceased, report:

That the petitioner's husband, Lyman M. Richmond, volunteered in the United States service during the war with Mexico, and served in company G, Michigan volunteers, for the period of one year; that while in the service he contracted chronic diarrhœa, of which he died soon after his discharge. The evidence of his previous robust health and excellent habits is full and complete. An officer of the regiment, though not of the company, testifies that he saw Richmond at Vera Cruz extremely ill, and that he did not expect him to live. He did, however, so far recover as to return home in feeble health, and shortly after died.

The proof is full and complete that he died on the 27th September, 1848, of disease contracted while in actual service in Mexico. The marriage of the petitioner with the said Lyman M. Richmond is fully established by the evidence.

It appears further from the evidence that the petitioner married one Gunsally, after the death of her first husband, and that from circumstances, which reflect no discredit upon her, she was compelled by self-respect and her obligations to the children of her first husband to obtain a divorce from said Gunsally.

By a special act of Congress, approved August 18, 1856, the petitioner was allowed a pension for five years from January 1, 1849, at the rate of ninety-six dollars per annum, or eight dollars per month, which pension she received. She is not entitled to the renewal of half-pay for life under the act of June 3, 1858, as she was not allowed half-pay under the special act, but full pay as the widow of a musician, that is eight dollars per month. She asks for half-pay pension from January 1, 1854, when her former pension expired, in such manner and upon such terms as are set forth in the act of June 3, 1858. The petitioner has already received an amount of pension equal to the half-pay of a musician for ten years from January 1, 1849, to January 1, 1859. We are of opinion that the petitioner is entitled to half-pay pension

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for life, commencing from January 1, 1859. She is in needy circumstances, and compelled to support herself and the two young children of Richmond, deceased, the soldier for whose service she claims, by her own industry. We report a bill for her relief, and ask the favorable action of the Senate.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1860.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Commerce, to whom was referred the "petition of Leonard Grant, master of the brig Plumas, praying remuneration for losses occasioned by the loss of said brig in consequence of the discontinuance by the government of one of the lights at Cape Elizabeth, without giving public notice," have had the same under consideration, and report:

That from a report of the Light-house Board, accompanying the letter of the Secretary of the Treasury dated January 24, 1860, it appears that the statement of the petitioner, in which he alleges that there was but one light exhibited where two had previously been shown, and that he mistook this light for another of the same color, called "Wood Island light," and in consequence of this mistake shipwrecked his vessel, is incorrect in these and other particulars, as will be fully shown in the report of the Light-house Board above mentioned, which, together with the letter of the Secretary of the Treasury accompanying, the committee beg leave to submit as part of their report; and they recommend that the prayer of the petitioner be refused.

To the honorable the Senate and House of Representatives in Congress assembled, A. D. 1858:

The undersigned, Leonard Grant, of Belfast, in the county of Waldo, and State of Maine, respectfully represents to your honorable bodies that he was master of the brig Plumas, of Boston, in June, A. D. 1858, and was sailing her on shares; that he sailed from Cardenas, Cuba, on the seventh day of May last, for Portland, Maine, with a cargo of molasses; that at Cape Elizabeth the government has established and kept up two lights for over twenty years, one a steady light and the other a revolving light; that about the the twenty-second day of May last the government took down the steady light for the purpose of repairing the house in which it was placed, and kept it down between five and six weeks without any notice to the public or to seamen, or masters, or owners of vessels; that while said light was down, to wit, on the fifth day of June last, about half past four of the clock

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in the morning, while he was sailing said brig, with the intention of making Portland harbor, he mistook the *single* remaining light on Cape Elizabeth for Wood Island light, both of which were of the same color and both revolving lights; that wholly in consequence of said mistake, which was caused by the other stationary light on Cape Elizabeth being down, he ran said brig on to Haskell's island, near Harpswell, Maine, and that said brig was duly abandoned as a total loss; that had he arrived at Portland his freight money would have amounted to fifteen hundred and twenty-five dollars, one-half of which belonged to him, and which was lost in consequence of the loss of said brig; that he had on hand in said brig at the time of her loss certain provision and stores amounting to, as near as he can judge, sixty dollars, all of which belonged to him, and all of which were lost; that he had on board of said brig, at the time of her loss, molasses and sugar, which cost him fifty-five dollars in Cuba, and which was all lost, and which, had it arrived at Portland, would have been worth eighty dollars; that he lost in beds and bedding some fifteen dollars; that in consequence of the loss of said brig he was thrown out of employment and is still out of employment, whereby he has lost his time, amounting to about four hundred dollars; and that he had no insurance on his freight, or any other article named as aforesaid. Wherefore he prays that your honorable bodies will allow him a sum of money equal to his loss, to be paid out of the treasury of the United States.

Dated at Belfast, this tenth day of November, A. D. 1858.

LEONARD GRANT.

I hereby certify that the foregoing statment is true.

WM. C. BLAKE.

Witness: WM. P. HORRIE.

Personally appeared before me the above named Wm. C. Blake, mate of the brig Plumas at the time of her loss, and well known to me as such, and then and there in my presence signed and made oath to the foregoing statement.

C. M. DAVIS, [L. S.]
Notary Public.

I, John Edwards, of Belfast, State of Maine, on oath, depose and say that I was a seaman on board of the brig Plumas, of Boston, in June, A. D. 1858, at the time she was wrecked on Haskell's island; that Leonard Grant was master, and William C. Blake was mate; that I have examined the foregoing statement, made and signed by Leonard Grant the master, and that the facts therein stated by him are true.

JOHN EDWARDS.

In the presence of NEHEMIAH ABBOTT.

WALDO, *ss:*

Then personally appeared before me, John Edwards, well known to me as a man of truth and veracity, and signed and made oath to the truth of the foregoing statement.

NEHEMIAH ABBOTT,
Justice of the Peace.

December 7, 1859.

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TREASURY DEPARTMENT,
Office Light-house Board, January 18, 1860.

SIR: I have had the honor to receive the communication of the chairman of the Committee on Commerce of the Senate, of the 7th instant, addressed to you, and inclosing a petition from Leonard Grant, late master of the brig "Plumas," in which petition said Grant claims indemnity for certain freight, &c., in consequence of the loss of said brig, by default of the government, as is alleged, in not keeping up a proper light at or near the scene of the disaster, which letter and petition were referred by you to this board for a report.

There is no merit whatever in this petition, and it grossly mistakes the facts, as I shall proceed to show.

The petitioner states that previous to the loss of his vessel there were two lights exhibited at Cape Elizabeth, one a fixed, and the other a revolving light; that at the time of the loss, the tower from which the fixed light had been exhibited was undergoing repairs; that no fixed light was in consequence exhibited from that tower, and that no notice of the discontinuance of said light was given; that the remaining light, which was revolving, he confounded with Wood Island light, which was also revolving, and of the same color; and that, in consequence of this mistake, the loss occurred.

The only facts not denied in this statement are, that previous to the loss there were two lights at Cape Elizabeth; that at the time of the loss one of the towers was undergoing repairs, and that no notice was given of these repairs.

The facts are, that at the time of the loss, the fixed light-tower at Cape Elizabeth was being fitted with a new lantern, for the purpose of receiving a second-order lens. Whilst these repairs were going on, care was taken to exhibit a good and sufficient fixed light, by means of a lens-lantern, temporarily provided for this purpose. No notice was given of this temporary substitution of the lens-lantern for the old reflectors, for the reason that none was required, as the character of the light had not been changed in anywise. There were thus at the time of the loss as before, a fixed and a revolving light exhibited from Cape Elizabeth.

With reference to the statement that the petitioner confounded the Wood Island light with the Cape Elizabeth revolving light, because both of them were revolving lights, and of the same color. The latter part of this statement is unfounded in fact, and the inference is just that the first part of the statement is also unfounded.

As you will perceive by inspection of the Light-house List, herewith transmitted, (page 12,) Wood Island light *was*, and *is*, a red light, whilst Cape Elizabeth *was*, and *is*, a *white* light.

Thus much for the lights; now for the circumstances of the loss.

The principal facts to be observed with reference to this case are, that the loss occurred at 5 o'clock on the morning of the 5th June, or an hour or more after daylight, whilst the petitioner was attempting to take a narrow passage, with a scant wind, which passage, under such a circumstance, was dangerous.

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The petitioner tells Congress that he lost his vessel on Haskell's island, but he did not tell it that he knew all the time where he was, and that he was attempting to run the passage between Marsh island and Haskell's island, with his mate as a pilot, who, having formerly lived on Haskell's island, thought himself acquainted with the passage, and volunteered to run the vessel through; which are the facts.

The petitioner further states that "said brig was duly abandoned as a total loss." Although this may be technically true, as between the owner of the brig and the insurance company, if there was an insurance upon her, (of which I am not informed,) the fact, in the sense in which it is used by the petitioner, is not true.

Neither brig nor cargo was a total loss. The former was afterwards gotten off, repaired at an expense of $2,500, and then sold for $4,000, and the latter was saved in a damaged condition. Further, the petitioner received the sum of $727, over and above charges, as freight from the consignees. All these facts he not only conceals, but contradicts by his averments above noticed, to the effect that everything was lost. The petitioner only claims the half of $1,525, freight, on this incorrect averment, that the whole freight was lost; and of this sum it appears that he has received, as already stated, the sum of $727.

His "venture" of sugar and molasses was no doubt somewhat damaged, as was also his bed-clothing, which he values at $15; but is probably no more foundation for the allegation of a "total loss" with reference to these articles than with reference to the cargo.

In conclusion I have respectfully to state that the brig Plumas was no doubt wrecked by ignorance or carelessness of the master, and that his being thrown out of employment (for which also he claims indemnity) is a just consequence of the judgment put upon his incapacity by ship-owners in his vicinity.

With reference to the information required by Mr. Clay as to the practice of this or other governments to reimburse claimants for similar losses, there is no evidence on file in this office that any such practice has ever obtained in this or any other government.

The petition of Mr. Grant is herewith returned.

Very respectfully,

R. SEMMES,
Secretary.

Hon. HOWELL COBB,
Secretary of the Treasury.

TREASURY DEPARTMENT, *January* 24, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of 7th instant, inclosing petition of Leonard Grant, master of the brig "Plumas," asking remuneration for the loss of his vessel, in consequence of the discontinuance of the light at Cape Elizabeth without giving public notice, and to say that, having referred to the Light-house Board the petition in question for a report of the facts in the case, I

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now transmit a copy of their reply, and have to add that the views of the case as therein expressed meet the concurrence of this department.

The petition transmitted is herewith returned.

I am, very respectfully,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Chairman Committee on Commerce, Senate U. S.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1860.—Ordered to be printed.

Mr. WILKINSON made the following

REPORT.

[To accompany Bill S. 134.]

The Committee on Pensions, to whom was referred the petition of James Smith, now of Washington, praying to be allowed a pension, beg leave to submit the following: That it appears his petition was presented to the committee at the 1st session of the 35th Congress and a favorable report was made thereon, which the present committee beg leave to adopt, and recommend that the accompanying be adopted.

IN THE SENATE OF THE UNITED STATES, APRIL 30, 1858.

The Committee on Pensions, to whom was referred the petition of James Smith, now in Washington, praying to be allowed a pension, have considered the same, and ask leave to submit the following report:

It will be seen by the letter annexed, from the office of the Adjutant General, that the petitioner was several years in the army of the United States, serving throughout the Mexican campaign and doing duty upon the frontiers of Texas, where he received the injury, while out with a scouting party, which has resulted in a permanent disability. The duty upon which he was engaged at the time of receiving the injury is regarded one of a hazardous character; and though the manner in which he received the wound does not appear in evidence, the petitioner appeared in person with an arm totally disabled, and stated that the injury was inflicted by a blow from a musket struck by the non-commissioned officer who was in command of the scouting party to which he was attached. The blow broke the arm and dislocated the elbow joint, and before the petitioner was able to return to camp and receive surgical treatment, a bony union of the joint had taken place, and left his arm so crooked as to be totally disabled. He remained in the hospital, he states, after his return until his wound was healed, when he was discharged from the service, on the surgeon's certificate, for ordinary disability.

The committee cannot avoid the conclusion that his injury was received while he was in the line of his duty, and, considering him entitled to a pension as an invalid, they report a bill accordingly.

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The following is the letter of the Adjutant General referred to, marked A, and presented as a part of this report:

A.

ADJUTANT GENERAL'S OFFICE,
Washington, March 17, 1858.

It appears on the records of this office that James Smith, a private of company C, 3d artillery, enlisted on the 20th February, 1847, for the war, and was discharged on the 6th September, 1848, by reason of expiration of service.

Second service.—Again enlisted on the 10th September, 1850, for five years, and was discharged on the 29th March, 1852, at Fort Worth, Texas, as a private of company F, 8th infantry, on surgeon's certificate of ordinary disability, for the following reasons: "On account of an irreducible dislocation of the head of the 'radius' of the left arm, rendered so by a fracture of the 'radius and ulva,' which occurred whilst he was absent on a scout; bony union having taken place prior to his arrival at this port.

S. COOPER,
Adjutant General.

MR. JAMES SMITH.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 36.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1860.—Ordered to be printed.

Mr. WILKINSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mrs. Ann Allen, widow of Samuel Allen, an officer of the militia of New York, in the war of 1812, *praying to be allowed arrears of pension, have had the same under consideration, and beg leave to report:*

That it appears that the petitioner prays back pension in right of her late husband's, from the date of the act under which he was allowed, to the 29th day of November, 1844, when his name was inscribed upon the rolls.

From information derived from the proper bureau it appears that Captain Allen was allowed a pension from the completion of his testimony, as the general invalid laws declare that that shall be the rule, and such has been the practice of your committee, and they can see no sufficient reason for departing from the general rule in such cases.

They therefore recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 143.]

The Committee on Commerce, to whom was referred the petition of Francis Hüttmann for remuneration for losses sustained in consequence of the illegal proceedings of the collector of the customs at San Francisco, have had the same under careful consideration, and report:

That it appears from the proof adduced by the petitioner that he arrived at San Francisco on the 15th August, 1848, with the bark Callao, and a valuable cargo, shortly after the discovery of gold in California, and eight days after the treaty of peace with Mexico had been officially published. He was refused an entry by the military officer acting as collector, for reasons which will be fully shown in the letter and report of the Secretary of the Treasury, and the reply of Mr. Hüttmann, accompanying, which the committee submit as a part of their report, and was subjected to a detention of twenty-seven days, during which time a number of other vessels had arrived and entered and supplied the demand for goods. In consequence of this detention the petitioner was unable to sell but part of his cargo, and that at greatly reduced rates, thus suffering much loss and inconvenience.

Believing that the case of the petitioner comes within the spirit of the act of September 28, 1850, which the committee interpret as pledging the government for the payment of actual damages, they think Mr. Hüttmann is entitled to its benefit, and report the accompanying bill for the adjustment of his claim under that act.

TREASURY DEPARTMENT,
January 31, 1859.

SIR: I have the honor to acknowledge the receipt of your letter of the 24th instant, transmitting the memorials of Francis Hüttmann, esq., of San Francisco, asking the allowance of a claim for the alleged illegal act of Collector Folsom in not allowing him to enter and land a cargo of merchandise with which he arrived at San Francisco in the year 1848, and also for a return of tonnage duty and light money levied on certain vessels which arrived at that port during the year 1849.

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With respect to his claim for not being allowed to enter and land the cargo of merchandise brought by him to San Francisco, I have the honor to inclose herewith a copy of the statement of the case, prepared from the papers presented by Hüttmann, by the clerk having charge of the matter, and upon which the decision of the department adverse to the claim was made. You will perceive from the statement that Mr. Hüttmann arrived at San Francisco on the 15th of August, 1848, and not in the year 1849, as stated in the memorial. The receipt for tonnage duties and light money on the bark "Callao," in which the merchandise was imported, is dated in February, 1849, and hence, it is presumed, arises the discrepancy with respect to dates.

With respect to his claim for a return of the tonnage duties and light money levied on certain vessels, it would seem, from the dates of the receipts accompanying the papers, that they were exacted by the collector at San Francisco appointed by the military authorities of the United States, after the treaty of peace with Mexico, but before the organization of the customs authorities under the revenue laws; and as the collector so appointed made no returns to the revenue officers of this department, no opinion can be expressed as to the legality of their exaction or the propriety of their return.

The papers inclosed, with your letter, are herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, jr., *Chairman of Committee on Commerce, United States Senate.*

CLAIM OF FRANCIS HÜTTMAN.

Case stated.

On the 15th August, 1848, Francis Hüttmann arrived at the port of San Francisco, California, from the port of Callao, Peru, in the Peruvian bark Callao, with an assorted cargo of goods, his own property.

After delivering within twenty-four hours his manifest and ships papers, he presented himself to Captain J. L. Folsom, United States army, who was at that time acting as military collector in San Francisco, a port of Mexico, which had come into American possession by conquest during the war with Mexico, and over which, at that time, the revenue laws of the United States had not been extended.

Captain Folsom refused to admit the vessel to entry, on the ground *that the manifest was not certified by the United States consul at Callao, the port whence the shipment was made.*

Mr. Hüttmann made various propositions to Captain Folsom, with a view of overcoming, if possible, this difficulty; but the latter officer, not being willing to assume any discretionary power beyond his instructions, declined taking himself any further action in the premises, and referred the whole matter to Colonel Mason, United States army, the then governor, who resided at Monterey, for his decision.

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On the 19th of August Mr. Hüttmann sailed in the "Callao" for Monterey, and reached that port on the 27th of the same month.

After considerable hesitation, it appears that Governor Mason finally decided, on the 5th of September, to admit the vessel to entry, receiving Mr. Hüttmann's bond that within eight months thereafter, properly authenticated, copies of the invoices should be furnished. This likewise admitted the bark to entry at, and clearance from, any other port or ports of California without further difficulty—the fees, of course, for such entrance and clearance being first paid.

Part of the cargo was disposed of at Monterey, and Mr. Hüttmann, making sail with the remainder, arrived at San Francisco on the 10th of same September, and met with no further obstacle at that custom-house.

In the interim, however, between the 19th of August and 10th of September, other vessels had arrived at San Francisco with large cargoes of merchandise, thereby overstocking the market with goods, and of course greatly depressing their value below the current rates prevailing when the "Callao" first reached the harbor on the 15th of August; Mr. Hüttmann claims that he was *consequentially* largely damaged thereby, and claims from the United States the sum of $106,508 73.

It is not deemed necessary to examine the various items composing this sum so claimed. The *law* of the case is so clear as to require but a simple citation.

During the hostilities with Mexico, and until the United States revenue laws were established over the territory acquired by conquest, duties were collected in the various ports of such territory under and by virtue of a tariff, and regulations accompanying, of a Treasury circular, dated March 30, 1847, which was approved by the then President of the United States.

It is provided in said circular, "That all ports or places * * * on the Pacific ocean * * are opened to our commerce, and to that also of all other nations, subject to the regulations and restrictions herein prescribed: First. Within twenty-four hours after the arrival of any vessel, the master must produce to the military or naval officers in command of the port a manifest of the cargo of said vessel;" "which manifest, if the vessel be from a port of the United States, shall be certified by the collector of the port from whence the shipment is made; *if from any port, by the consul or commercial agent of the United States, if any there be*—otherwise, by a consul of any nation at peace with the United States. If no such manifest be produced, the vessel shall be subject to a penalty of one dollar per ton, registry measurement, in addition to the tonnage duty hereinafter described."

The claimant offers no evidence or even averment to show that he ever offered or *tendered* this penalty of one dollar per ton, but expressly states, in his memorial, that he proceeded under the second section of the act of March 1, 1823, and proposed to Captain Folsom that the vessel should be admitted to entry upon Mr. Hüttmann executing bond for the production of properly authenticated invoices.

By reference to the act in question, it will be seen that the admission to entry or appraisement of any goods, wares, or merchandise, *without invoice*, which is required by the statute, is left entirely to the

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"*judgment*" of the collector, who is authorized to admit them, if any circumstances connected therewith render it, in his opinion, "*expedient*" so to do. There is nothing mandatory or obligatory upon the collector to admit to entry goods so situated—the whole subject is left to his best discretion.

Mr. Hüttmann *admits that his manifest*, when delivered to the authorities at his first arrival at San Francisco, *was not so certified*, and excuses the omission by the fact that in the month of March, during the year preceding, that is in 1847, he arrived at San Pedro, Upper California, in a foreign schooner, with an assorted cargo, and was permitted by Mr. Alexander, the acting collector at that port, to enter his cargo on the payment of fifteen per cent. duty thereon, according to the cost, as shown by the *original bills of purchase*, and from this he inferred that a similar formality, on any future occasion, would alone be necessary.

Any claim to damage arising from his acting on such an inference is sufficiently answered by the fact that the treasury instructions, under which Captain Folsom was necessarily guided in the performance of his duties, were published March 31, 1847, at Washington, and must of course have reached the Pacific long anterior to June 9, 1848, the date of claimant's sailing from Peru on his last voyage.

The law upon which Mr. Hüttmann now applies to the Treasury Department for relief, is stated by him to be found in the proviso contained in the 4th section of the act of September, 1850, as follows:

"*Provided*, That where any ships or vessels, or any goods, wares, and merchandise, may have been subjected to seizure, or confiscation, or detention, *by any officers of the customs in the collection district of Upper California or the district of Oregon*, prior to the passage of this act, and it shall be made to appear to the satisfaction of the Secretary of the Treasury that the owner or owners of any such ships or vessels, or the owner or owners or importers of any such goods, wares, and merchandise, has, or have, sustained damage or loss by reason of any *improper seizure, confiscation, or detention thereof*, the said Secretary is hereby authorized to extend such relief in the respective cases as he may deem just and proper."

There is, however, nothing contained in this proviso applicable to the claimant's case, from the fact that the collection district of Upper California was not established nor officers of the customs appointed until March 3, 1849, to take effect on the 10th March thereafter.

The acts of the military collector, under and by reason of which Mr. Hüttmann complains he received damage, occurred in August and September, 1848; the class of cases referred to in the proviso, and for which relief is to be sought from the Secretary of the Treasury, is necessarily and only embraced in the period of time between the 10th of March, 1849, and September 28, 1850, being the dates respectively of the creation of the collection district and the passage of the relief proviso.

If it were necessary to extend the argument, it will be seen that the act in question grants relief in cases of seizure, confiscation, or detention.

It is not pretended that the "Callao" or any portion of her cargo

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was either seized or confiscated, neither can any improper detention be alleged. There was a simple refusal of the military officer to admit to entry. The vessel and owner were at full liberty to proceed elsewhere, which was availed of by Mr. Hüttmann's taking his cargo to Monterey and disposing there of such part as he could sell to best advantage.

WM. HEMPHILL JONES,
Clerk Treasury Department.

MAY 21, 1857.

Remarks in reply to the report made by the Treasury Department in the claim of Francis Hüttmann, in the case of the bark "Callao."

WASHINGTON, *February* 12, 1859.

The treaty of peace with Mexico was concluded on the 31st May, 1848, by which Upper California became part and parcel of the United States, and it was no fault of mine that it was not at once made by Congress into a collection district; anyhow, *my existing right to enter my cargo on arrival, and in time of peace, under the United States tariff*, could not thereby be abrogated or affected in any way whatever; and although the honorable Secretary of the Treasury speaks in his report of Captain Folsom as a *military* collector, he could be so no longer, after the 7th August, 1848, the treaty of peace with Mexico being promulgated in California on that day by Governor Mason, and especially communicated to Captain Folsom, in an official letter, written by H. W. Halleck, the then secretary of state of California, (voucher K K,) in which he says: "The tariff of duties for the collection of military contributions will *immediately* cease, and the revenue laws and tariff of the United States will be established in its place." The "revenue must be collected in the same currency as in any other port of the United States;" by these words I opine California was created into a collection district for all *intents and purposes*, and Captain Folsom could henceforth act no longer as military, but solely as civil collector; for peace had been declared, and the United States revenue laws extended over the country by the above proclamation of Governor Mason, all of whose acts were subsequently approved by government.

I have only now discovered when Captain Folsom referred me to the act of March 1, 1823, stating it was the *only* law he had on the subject to guide him, that such assertion was not only not founded in truth, but was a glaring unmitigated falsehood; for the letter of the 1st of August, 1848, (see voucher K K,) addressed to Collector Folsom by the before mentioned secretary of state of California, H. W. Halleck, states: "From the difficulty or rather impossibility of ascertaining the value of this gold dust, the governor authorizes you to receive the *export duty* in kind—that is, taking the required per centage out of each lot of gold dust exported." Now, sir, the treasury instructions of 30th March and 16th November, 1847, were the only revenue laws that ever imposed any *export duty* on gold and silver, and positive proof is therefore afforded, as the collector was in the custom of levying the export duty, that said regulations were at the time in his possession,

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and acted upon by him when I arrived with the "Callao," on the 15th August, 1848, and the demanding of the penalties for non-production of certified manifest and invoices *was as much his duty as the exaction of the documents themselves*, for it was not left to *his discretion* by those regulations *to admit me or not*, on the contrary the law being peremtory, *required* him to admit my cargo to entry, either with certified invoices or without, and all he had to do was to impose the penalty on entering the cargo! But in proceeding thus, he must have admitted my cargo to entry, and is exactly what he did not want to do, for reasons explained in my general memorial, (page 4,) and besides alluded to by the citizens and traders of San Francisco in their petition in my behalf to Governor Mason, (voucher G.) Moreover by Captain Folsom, asserting to me that the act of March 1, 1823, was the *only* law he had on the subject to guide him, he led me astray, thereby causing me to claim in my general memorial to the Secretary of the Treasury, under an act which was not in force at the time of my arrival, although under the general collection laws, I was still entitled to enter my cargo by my oath before any collector!

The treasury instructions of the 30th March, 1847, being admittedly in force and operation at the time of the "Callao's" arrival at San Francisco, under which instructions the honorable Secretary of the Treasury maintains Collector Folsom was necessarily guided, and, as it is objected that I did not *tender* the penalty of one dollar per ton for non-production of *certified manifest*, and also admitted that, when delivered to the authorities on my first arrival, the manifest *was not so certified*, I beg to state that the honorable Secretary has evidently mistaken me for the master of the vessel, and overlooked the important fact that the certified manifest of the entire cargo is a document which did not concern me at all, as merely one of the shippers of the cargo in the vessel, but is a document exclusively appertaining to the *master*, which, according to section first of said instructions, had to be presented by *him* to the military or naval officers within twenty-four hours after arrival; the master in this case in command of the vessel was Captain John Stephens, and if he presented an informal document, it would have been the collector's duty to impose upon *him* the lawful penalty of one dollar per register ton; but he was wrong in refusing to me the entry of my cargo on that ground, for, as *owner* of the goods, I had a perfect right to make oath to my true, not certified, invoice before any collector; moreover the penalty was never demanded from the master or even from myself; I satisfied all the pecuniary demands the collector ever made upon me, even to paying the tonnage and light dues, (see voucher I,) although illegally collected, Peruvian vessels being by treaty exempted from those imposts.

The honorable Secretary of the Treasury says in the report: "Mr. Hüttmann made various propositions to Captain Folsom with a view of overcoming, if possible, this difficulty, (the want of certified manifest,) but the latter officer, not being willing to assume any discretionary power beyond his instructions, declined," &c., &c. In reply I beg to say, that the *only* proposition I made to Captain Folsom in consequence *of his stating that the law of March* 1, 1823, was the *only one* he had to guide him, and in order to save any responsibility there might be, was

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to give satisfactory bonds for the subsequent production of my *certified invoices*, and had no reference whatever to the certified manifest of the captain's. And as for Captain Folsom "not being willing to assume any discretionary powers beyond his instructions," I should not have wanted him to do so, for sections first and tenth of the very treasury regulations of March 30, 1847, provided for my case, and the use of discretionary powers beyond them did not at all rest with the collector, and was a mere fancied responsibility.

The honorable Secretary in his report on my case also implies, in reference to the supplemental collection act of March 1, 1823, (although not then in force,) that I presented *no* invoice. This charge I must respectfully repel, because I presented to Captain Folsom, the collector, not only my true invoice, (see my letter to Governor Mason of 28th August, 1848, voucher H; also affidavit of T. M. Leavenworth, voucher E; and the testimony of sundry other witnesses,) but also tendered to him the *original bills of parcels* by which I had purchased the cargo, and which now accompany my claim, (see vouchers O.) By my true invoice, as first presented to Collector Folsom, I afterwards, when admitted, paid my import duties according to the United States tariff, and if there was any error or informality in my not having *certified* invoices, the proper course for Collector Folsom to have pursued was to have demanded the penalty therefor, according to the tenth section of the regulations of March 30, 1847, then in force; but he had no right to refuse entry to my cargo! But the fact is, there was no error or informality whatever, for, as *owner* of the goods, I was not obliged to produce a certified copy at all; that is, a copy sworn to by me before a consul at the port of departure, which is only required when the owner does not accompany the goods, and the oath to the entry of importation is made by an agent; but as owner of the goods it was immaterial whether my oath to the true cost was made before the consul at the port of departure or before the collector at the port of entry, which latter mode is in daily practice at all the ports of entry in the United States, the intention of the law being in all cases to have the oath of the real owner, and not to allow any frauds on the revenue by the oath which might be given in good faith by an agent importing the goods, but who is of course unable to swear, as of his own knowledge, to the real cost of the goods, and can only do so to the best of his knowledge and belief.

The honorable Secretary of the Treasury in his report makes a virtue "of my having been at full liberty to proceed elsewhere with my cargo, and that I availed myself of it by going to Monterey." In reply, I beg to say that my so doing was no voluntary act of mine, but that I was *forced* to leave San Francisco, my port of destination, and at that time, for me, *the most splendid market in the world*—(see the citizens' petition, in my behalf, to Governor Mason, voucher G)—by the continued refusal of Collector Folsom to permit my cargo to entry. The sole object of my going to Monterey was to procure from the superior authority of Governor Mason an order to admit my cargo to entry; and the moment I had procured it I hastened back to San Francisco without the least delay. But to obtain said object I had to proceed there in the vessel as the most expeditious way, there being at

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that time no steamers, stages, or other means of transit on the coast. I also had to incur the risk of the sea voyage there and back for vessel and cargo and other expenses incidental thereto!

The "Callao" being forced to go to Monterey, *in charge of a custom-house officer* named Hubbard, placed on board by Collector Folsom, did not this act virtually amount to a seizure of my cargo, at least in so far as it limited my free action to proceed where I pleased, and prevented my going to any other port except Monterey? It also states in the report "there was merely a simple refusal of the military officer to admit to entry," but this unwarrantable refusal ended to me in a delay of twenty-seven days, the arrival of several cargoes *ad interim*, and ruinous losses, and became thus to me most serious in its consequences!

My claim originated on the 15th August, 1848, and not in 1849, as erroneously stated in the memorial to Congress, since corrected, but the receipt for tonnage duties and light money on the bark "Callao," dated in *February*, 1849, belongs to my separate claim for illegally collected tonnage and light dues paid in 1849 on Danish, Peruvian, and German vessels, and refers to a *subsequent* voyage of the Peruvian bark "Callao," and the mistake was no doubt caused by a clerical error in the department. The claim for tonnage and light dues, amounting to $124 80, paid on the Callao's *first* voyage in 1848, is included in my general claim on account of the Callao's detention, for the receipt of which $124 80, included in my first payment of import duties at Monterey, on the 5th September, 1848, see voucher I.

If the honorable committee desire any explanations on any other point of my claim I shall be happy to render them.

Respectfully submitted,

F. HÜTTMANN.

The Hon. COMMITTEE ON COMMERCE,
United States Senate.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 38.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1860.—Ordered to be printed.

Mr. DURKEE made the following

REPORT.

[To accompany Bill S. 144]

The Committee on Pensions, to whom was referred the petition of Jeremiah Pendergast, of the District of Columbia, for an increase of pension, beg leave to report:

That from the official certificate of C. D. Maxwell, surgeon in the United States navy, approved by Captain W. J. McCluney, dated February 5, 1856, it appears that the petitioner was totally disabled while in the naval service of the United States, and in the line of his duty, in an attack on pirates, in the bay of Kuhlan, on board the steamer Powhatan, on the 4th of August, 1855.

He was allowed a pension at the rate of four dollars per month, which sum is totally inadequate to his support for his total disability.

Your committee therefore recommend the passage of the accompanying bill.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 39.

IN THE SENATE OF THE UNITED STATES,

FEBRUARY 9, 1860.—Ordered to be printed.

Mr. DURKEE submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mary T. Maltby, praying to be allowed a pension, as widow of Lieutenant James West, of the army, beg leave to report:

That it appears by a letter from Colonel D. S. Miles, United States army, Lieutenant West was stationed at Fort Gibson, Cherokee Nation, in May, 1834, and that, during that month, he was detailed to accompany General Leavenworth as topographical officer; that in the month of September following he was brought back to Fort Gibson, and was confined to his bed until his death.

If the death of Lieutenant West could be traced to disease contracted while in the service, the petitioner would not be entitled to pension, under any general statute, were she now a widow; but it appears that she was again married in 1845, and that her husband still survives, and in such cases pensions could not be allowed while under coverture. The committee therefore recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 40.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1860.—Ordered to be printed.

Mr. HAMMOND made the following

REPORT.

[To accompany Bill S. 145.]

The Committee on Naval Affairs, to whom was referred the memorial of Otway H. Berryman, praying to be allowed the amount of money paid by him in the adjustment of his accounts as purser, have had the same under consideration, and report:

That the grounds relied upon by Lieutenant Berryman are substantially those which induced Congress to grant relief to Lieutenant Charles G. Hunter, in 1858, and your committee cannot distinguish between them.

Lieutenant Berryman assumed the command of the United States schooner On-ka-hy-e in October, 1846, under an order from the Navy Department, dated the 20th October, 1846, and he immediately entered upon special duty, and performed active and arduous service in the Gulf of Mexico, to Brazil and Chagres, during twenty-two months, which was terminated by the total shipwreck of the vessel on a sunken reef, in July, 1848.

With his command he was ordered to perform the duties of purser to the vessel, and these duties he performed throughout the whole period of his command.

No adjustment of his accounts took place until his return to the United States, when it was found that he had actually expended as purser more money, by $2,325, than he could produce the requisite vouchers for. This sum he paid to the government, and his accounts were balanced accordingly.

The memorialist alleges that he has diligently and faithfully kept and disbursed the means intrusted to him as purser, to pay the lawful liabilities of the government, and that the omission to take and return the proper vouchers for all his expenditures was alone the result of his ignorance of and his want of practice in the duties of purser.

The memorialist has a family to support, dependent upon him. He had a small landed estate, which he sold to pay his deficiency, and himself and family have thereby become subjected to great pecuniary embarrassment.

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Your committee, from an examination of the memorial and its accompanying papers, and from inquiries also at the Navy Department, are satisfied that the memorialist, whose character and standing as an officer and a man are irreproachable, did faithfully disburse the means intrusted to him in the payment of the proper liabilities of the government; and that his ignorance of his accounts, and of the importance of carefully preserving vouchers for every expenditure, was due to his general want of familiarity with the duties of his incidental post of purser. He received no compensation for the performance of these duties, nor could he receive any legally. His deficiency is the result of no misapplication of the means of the government, of no want of due care and diligence in guarding and preserving them. The government has had the benefit of the expenditure and of his services—services which his education and training as an officer of the navy did not make him at all peculiarly fitting to perform. They belong wholly to another department of the navy and to men differently educated. They are imposed on officers in command of public vessels by the government for its own convenience, and it should, unless some fraud is established, bear the losses of its own neglect in not appointing the proper officer to perform these services.

The amount of disbursements by memorialist as purser, during the period referred to, for which he obtained credit at the department, were $21,951 50.

Your committee deem it a proper case for relief, and report a bill accordingly.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 16.]

The Committee on Commerce, to whom was referred "a bill repealing all laws or parts of laws allowing bounties to vessels employed in the Bank or other codfisheries," have had the same under consideration, and report:

That after a careful and elaborate examination of the whole subject of fishing bounties and allowances, the committee have been irresistibly led to the conclusion that they originated in the fallacious, but now almost universally exploded theory of refunding to the manufacturer, on establishing the fact of reëxportation, the amount of duties paid on the raw material entering into the product of his industry and skill. These gratuities, whether granted in the shape of drawbacks, allowances, or bounties, according to the phraseology of the law authorizing them, were founded and dependent upon the salt duty. This is proven by their origin and history, by the memorials of the fishermen praying for them, by the reports of committees, and by the acts allowing them, and by the debates of Congress.

The first petition touching the subject on the files of the government was from the Massachusetts legislature, presented to Congress in 1790, and referred to the Secretary of State (Mr. Jefferson) for a report. This petition asked a drawback of the duties, or as they styled it, "a remission of duties on all the dutiable articles used in the fisheries; and also premiums and bounties." Mr. Jefferson recommended the allowance of drawback of duty, but opposed the allowance of premiums and bounties, declaring that "*the fisheries were not to draw support from the treasury.*" This drawback was confined to the duty on salt used upon exported fish, and no drawback or remission of duties was ever allowed upon those other articles mentioned in the petition, by any act of Congress.

1. The first tariff act, July 4, 1789, imposed on salt the duty of six cents per bushel, and granted a bounty of five cents a barrel on pickled fish exported, and also on beef and pork exported, and five cents a quintal on dried fish exported. It declared these bounties to

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be "*in lieu of a drawback of the duties imposed on the importation of the salt employed and expended thereon.*" Limited to seven years.

2. The next act, August 10, 1790, doubled the duty on salt, and doubled the bounty and allowances on salt-cured and exported fish, pork, and beef. These bounties and allowances were described by the act to be "*in lieu of drawback of the duty on salt used in curing fish and provisions exported.*"

3. The act of February 16, 1792, shifted the bounty from the "quintal" of dried fish to the tonnage of the fishing vessel, and the payment of the allowance from the shipper or exporter of the fish to the owner of the fishing vessel, and changed its name from "bounty" to "allowance." This was done on the petition of the fishermen themselves, who said "that the bounty granted to the fishery by Congress *as a compensation for the duty on salt* will not operate to that effect so effectually as if paid direct into the hands of the owners of the vessel, instead of "the shippers of the fish." The act declares: "*That the allowance now made upon the exportation of dried fish*" &c., "*in lieu of a drawback of the duties paid on the salt used in preserving the same shall cease,*" &c., "*and as a computation and equivalent thereof,* there shall be paid on the last day of December annually to the owner of every vessel, or his agent," &c., on vessels between five and twenty tons $1 per ton; between twenty and thirty tons $1 50, and above thirty tons $2 50; provided that no vessel shall be allowed more than $170. This act is the basis of the present system of tonnage allowances, and the construction given it by the fishermen who invoked it, by its advocates in Congress when discussing it, and by the Treasury Department subsequently, prove beyond doubt or question that it merely changed the mode of payment, but did not increase it, and was designed to refund drawback of the salt duty, and not afford bounty. When this bill was discussed, Mr. Goodhue, of Massachusetts, (February 3, 1792,) said:

"The object of the present bill is only to *repay the same money* into the hands of those persons who are immediately concerned in catching the fish, and there can no reasonable objection be made to *such a transfer of the drawback,* as government will not lose *a single dollar by the change.* The gentleman from Virginia, (Mr. Giles,) talks of the unconstitutionality of granting bounties; but no bounty is required."

He read a calculation to prove his assertion, and to show that the United States would probably save a thousand dollars *per annum* by the proposed change. Mr. Ames, of Massachusetts, said:

"Though the whole is intended for the benefit of the fishery, about one-fourth of what is paid is not so applied; there is a heavy loss both to government and the fishery." * * * "The bounty is not paid till the exportation, nor then, till six months have elapsed; whereas the duty on salt is paid before the fish is taken—it is paid to the exporter, not to the fishermen. The bounty is so indirect that the poor fisherman loses sight of it." * * * "Passing through so many hands, and paying so many profits to each, it is almost absorbed." * * * * * * *

"Yet, instead of asking bounties, or a remission of duties on the article consumed, *we ask nothing but to give us our money back, which*

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you received under an engagement to pay it back in case the article should be exported." * * * * * * *

"*The drawback falls near nine thousand dollars short of the salt duty received by the government.*" * * * * *

"*We rely on the evidence before you, that the public will not sustain the charge of a dollar.*"

Mr. Gerry, of Massachusetts, said:

"It is now proposed to make a further commutation; *gentlemen call this a bounty on occupation; but is there any proposition made for paying to the fishermen, or other persons concerned in the fishery, any sums which we have not previously received from them?* If this were the case, it would, indeed, be a bounty; but, if we beforehand receive from them as much as the allowance amounts to, there is no bounty granted at all."

Mr. Livermore, of New Hampshire, said, 6th February, 1792:

"*It does not lay a farthing of bounty or duty on any other persons than those who are immediately concerned in it. It will serve them, and will not injure anybody.*"

Mr. Lawrence, of New York, said:

"From examining the section, he conceived it contemplated no more than what the merchant is entitled to under the existing laws. The merchant is now entitled to the drawback, but it is found by experience that the effect has not been to produce that encouragement of the fishermen it was expected; and he presumed the way was perfectly clear *to give a new direction to the drawback, and this is all that is aimed at in the bill.*"

Mr. Madison, of Virginia, combated, in an elaborate argument, the doctrine of the "general welfare," then first put forth by General Hamilton, and supported the bill expressly on the ground that it was a mere commutation of drawback, but no bounty. He said:

"*I think, however, that the term bounty is in every point of view improper,* as it is here applied, not only because it may be offensive to some, and, in the opinion of others, carries a dangerous implication, but also because *it does not express the true intention of the bill, as avowed and advocated by its patrons themselves.* For if, in the allowance, nothing more is proposed *than a mere reimbursement of the sum advanced, it is only paying a debt; and when we pay a debt we ought not to claim the merit of granting a bounty.*"

Mr. Bourne, of Massachusetts, said:

"The object of the first section in this bill is intended for the relief of the fishermen and their owners. They complain that the law now in force was meant for their benefit, by granting a drawback on the fish exported; this they find by experience is not the case, for they say that neither the fishermen who catch the fish, nor the importer of the salt, receive the drawback; and I rather suppose, sir, it is the case."

4. The act of May 2, 1792, increased the salt duty by requiring each fifty-six pounds to be reckoned as a bushel, (for the measured bushel of solar salt, used in the fisheries, usually weighed from 70 to 80 pounds,) and added 20 per cent. to the bounties and allowance on tonnage. Limited to two years.

5. The act of July 8, 1797, raised the salt duty from 12 to 20

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cents a bushel, and added 33⅓ per cent. to the fishing bounties. Limited to two years, and the end of the next session of Congress.

6. The act of April 12, 1800, continued the allowance on tonnage of fishing vessels for ten years, in lieu of drawback of salt duties: "*Provided, that the said allowances shall not be understood to be continued for a longer time than the correspondent duties respectively, for which said additional allowances were granted, shall be payable.*"

7. The act of May 7, 1800, continued the salt duty for ten years, and with it the bounties and allowances.

8. The act of March 3, 1807, repealed the salt duty and all acts granting bounties on exported fish, and "allowances to the owners and crews of fishing vessels, *in lieu of drawback of the duties paid on salt used by the same*," from and after the 1st January, 1808. This act was passed on the recommendation of President Jefferson, by an almost unanimous vote of Congress; all the republicans voted for it, and all the federalists but five.

9. The act of June 28, 1809, authorizes accounting officers to credit collectors for sums "paid for allowances to the owners and crews of fishing vessels, *in lieu of drawback of duties on salt used by the same*, to 31st December, 1807." Up to this repeal of the salt duty, the same bounties, (as they were called,) in lieu of drawback of that duty, were given to the exporters of salted beef and pork, that were given to exporters of salted fish.

10. The act of July 29, 1813, revived the salt duty, and the bounties and allowances, fixing the duty at 20 cents per bushel on salt, the bounty at 20 cents per barrel of pickled fish exported, and the allowance on tonnage of vessels engaged in the codfisheries, for four months or upwards, at $1 60 to vessels of five and less than twenty tons, $2 40 to vessels of twenty to thirty tons, and $4 to vessels above thirty tons, for each and every ton; provided the allowance to no vessel for one season should exceed $272.

This act was reported by the Committee of Ways and Means, as a revenue measure, for the support of the war, and was limited to the duration of the war with Great Britain; and "for one year thereafter, and no longer."

11. The act of Feburary 9, 1816, declared the last named act "shall be and the same is hereby continued in force," without limiting its duration. It was continued upon the ground that *it was necessary to pay the war debt*, as will appear by the recommendation of the Secretary of the Treasury, and the report of Mr. Lowndes, the chairman of the Committee on Ways and Means. It was estimated that $13,500,000, applied to that debt annually, would extinguish it in twelve years; and the act of 1813 above cited was continued, impliedly, for that period, or till the war debt was extinguished. Other taxes and duties were continued at the same session, in the same language, and for the same reason. Hence there is not the slightest ground for alleging that the continuance of the act of July 29, 1813, was through favor of the fisheries.

12. The act of March 1, 1817, requires proof that three-fourths of the crew of any fishing boat or vessel are "citizens of the United States, or persons not the subjects of any foreign prince or state;"

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which was the first act requiring any of the crew to be citizens of the United States, or not to be aliens. Previous to that act all the crew of a fishing vessel might have been foreigners, and even at this time one-fourth may be foreigners, and the other three-fourths persons not citizens of the United States; provided they are not subjects of any foreign prince or state.

13. The act of March 3, 1819, uses the word *persons*, instead of citizens, in describing the crews of fishing vessels, and increases the allowance to $3 50 to vessels of five and not more than thirty tons, and $4 if above thirty tons; provided no vessel, for one season, shall receive more than $360.

This is the first and only act where the fishing bounty or allowance did not expressly depend upon the salt duty, by its terms; and upon this absence of positive allusion to the salt duty alone rests the assertion that the allowances were made without consideration of that duty, for the sake of nurturing seamen. But even this slender support of that assertion is swept away by a small bit of testimony, and a simple calculation. In 1816, when the act of 29th July, 1813, was continued, Mr. Reed, of Massachusetts, maintained that the tonnage allowance of that act was not equal to the duty on the salt used in the codfisheries. Such was perhaps the fact. It was said by the fishermen and their advocates that it required a *measured* bushel of salt for a barrel of pickled fish or a quintal (112 pounds) of dried fish. The measured bushel weighed about 80 pounds, (instead of 56, which was the custom-house bushel,) and the duty on it amounted to about 30 cents. They further said, that each vessel would catch and cure about 12 quintals of fish for each ton of the vessel. Therefore, the allowance was fixed at the duty of 30 cents per bushel, multiplied by twelve, which would give $3 60 for each ton of the vessel. If a vessel above thirty tons caught and cured more than 12 quintals to the ton, it did not get the full drawback of the salt duty, and if one of less than 30 tons caught and cured as much as 12 quintals, it got less than the drawback. Again, in 1789, the Marblehead committee of fishermen, in their memorial, said a vessel of 65 tons paid $80 25 duty on her salt, when the duty was 6 cents; which, if true, would make the same vessel pay $401 25, when the duty was 30, being $41 25 above the maximum allowance of the act of 3d March, 1819. It was, therefore, because it was believed the allowance of the act of July 19, 1813, did not equal the amount of duty on the salt consumed in curing codfish, that the allowance was increased by the act of 1819.

Thus, it appears, that the allowances on tonnage of vessels employed in the Bank, or other codfisheries, were given in lieu of the drawbacks of the duties on the salt used in curing the exported fish, and not for the sake of fostering a nursery of seamen. These allowances are always found in the salt acts and not in the fishing codes, where they would properly be, if Congress intended to give bounty to fishermen and to nurture seamen, instead of returning duties paid by them. These allowances were contingent upon the salt duty, which they always accompanied; originating with it, rising with it, falling with it, and reviving with it. Like allowances were made in the same acts

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to exporters of salted beef and pork previous to the act of 3d March, 1807, which repealed all allowances both to fishermen and farmers. No drawback or remission of duty was allowed on other imported articles, used by the fishermen as prayed for by them, because they were consumed and not exported, like salt, with the fish. All the acts were limited to a few years, that of 1789 to seven years; of 1792 to two years; of 1797 to two years, and till the end of the next session of Congress thereafter; that of 1800 to ten years, which was cut down to seven by the act of 1807; that of 1813 to the close of the war, and one year thereafter; and that of 1816, impliedly, to twelve years, or till payment of the war debt; which shows that they were not intended to establish schools for seamen. No allowance or bounty was ever asked or granted to whale fishermen, because they did not use salt in preparing whale oil, or whalebone; and were not taxed with a heavy salt duty. The account of the allowances has always been kept and stated by the Treasury Department, together with that of the salt duty; the allowance being estimated in bushels of salt, according to the existing duty at the time, and deducted from the gross importation of the year, and the net revenue then calculated on the remainder. And, lastly, up to March 1, 1817, all these allowances or bounties might have gone to foreigners, which would have been entirely consistent with drawback, or a return of duty paid on salt that was exported, but utterly inconsistent with a system for training seamen for the United States. Even that act only requires three-fourths of the codfishermen of a vessel "to be citizens of the United States, *or persons not the subjects of any foreign prince or state*"—which persons may be black, red, or copper-colored. But even this requirement seems abolished by the act of March 3, 1819, which gives the allowance to *persons*, without distinction of color, country, or allegiance. Surely it was not the purpose of any Congress to make seamen of foreigners, or of those who owe no allegiance to our government!

For many years past the codfisheries have been drawing support from the treasury, or getting bounty contrary to the meaning of the laws giving allowances on tonnage—to the avowed purpose of all their advocates in framing those laws—to the prayers and expectations of the fishermen, expressed in their petitions for those laws—to their construction by friends and foes until within the last twenty years—and to the spirit of the Federal Constitution. They have realized bounties not by legislation for their benefit, or by any change of policy towards them by Congress, but from a reduction of the salt duty. Up to 1830, if they got more than drawback it was an inconsiderable excess; unless, forsooth, the fishermen, and their champions in Congress, exaggerated the quantity of fish taken, and of salt used by them. But in that year the salt duty was reduced from twenty to fifteen cents on the bushel of fifty-six pounds; in 1832 to ten cents; in 1833, by the compromise act, a prospective scale of reduction was made, under which the duty sunk to less than seven cents in 1840; and at this day it is but 1.54 cents! Yet, from 1830 till to-day, they have gotten allowances equal to thirty cents duty! The accompanying table shows the large bounties they have realized, and the small drawbacks due them since 1847:

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Table exhibiting the tonnage of vessels engaged in the codfisheries, the allowances paid, &c., from 1848 *to* 1859.

Years.	Tonnage of vessels engaged in codfisheries.	Allowance paid to fishing vessels.	Sums due as drawback.	Excess of bounty over drawback.
1848	82,652	$243,434	$22,811 95	$220,622 05
1849	73,882	287,604	21,809 96	265,794 04
1850	85,646	286,796	22,507 76	264,288 24
1851	87,476	328,267	25,193 08	303,073 92
1852	102,659	304,569	26,855 59	277,713 41
1853	99,990	323,199	24,837 51	298,361 49
1854	102,194	374,286	31,271 36	343,014 64
1855	102,928	346,196	32,484 07	313,711 93
1856	95,816	271,838	29,319 69	242,518 31
1857	104,573	464,178	29,238 61	434,939 39
1858	119,254	389,500	23,612 29	365,887 71
1859	129,637	426,962	23,956 91	403,005 09
Twelve years	1,186,717	4,046,929	313,896 78	3,732,930 22

Average tonnage per year for twelve years	98,890
Average allowance per year for twelve years	$337,244 08½
Average sum due as drawback per year for twelve years	26,141 39
Average excess of bounty over drawback for twelve years	311,077 51
Aggregate excess of bounty over drawback in the last twelve years	3,732,930 12

The above table does not fairly exhibit the tax on the people of the United States of this system, whose fathers—Ames, Gerry, Goodhue—all protested would not cost the public a single dollar! The table rests on the hypothesis that the fishermen import their salt, whereas they are supplied with the larger part of it by the Massachusetts salt manufacturers; and that the crews catch and cure twelve quintals of fish to the ton, and use a measured bushel of salt for each quintal, whereas we are told by those who should know the facts, that they average only about nine quintals to the ton. If this be true, we should add at least twenty-five per cent. to the above estimate of bounty. Add to this tax from two to thirty per cent. for collecting and disbursing this bounty, and the expense of the revenue boats and revenue cutters (the latter costing about $11,000 annually) on the New England coast, employed in watching the fishermen to prevent their violating the law and defrauding the treasury.

If we may credit the common testimony of the collectors and other officers of the Treasury Department in the fishing districts, for more than forty years past, we must believe, that despite all the expensive guards placed by the government over the fishermen, they often get allowances when not entitled to them by law, and that these bounties, (as said by Secretary Guthrie,) "instead of furnishing encouragement for seamen, mainly encourage the commission of multiplied perjuries, and tend to the demoralization of a large class of the community."

The committee refer senators to the letters of the present Secretary of the Treasury, and of his immediate predecessor, accompanying this

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report, which are based upon volumes of testimony on file in the department.

The arguments commonly used in support of these bounties are, that the codfisheries cannot live without them, that they furnish a cheap nursery for seamen, and that the codfishermen did great and gallant services in both our wars with England.

The committee think the annexed table, (A,) showing the capital, tonnage, men employed, value of fish and oil, &c., of the codfisheries, compiled from official returns of the industry of Massachusetts, for the year ending June 1, 1855, to which the committee add the *per centum* of gross earnings on capital, prove that those fisheries do not need the bounty. And in further support of this opinion, they state that the mackerel-fishery has prospered and increased as much as the codfishery, unaided by bounty, although pursued in similar vessels, in the same waters, at the same season of the year, with like hazards, dangers, and toils; and the whale-fishery of the United States, without a cent of bounty, has outstripped that of all other nations, although fostered by high and long-continued bounties.

Certainly the mackerel, whale, and other fisheries, and the merchant marine, furnish as good schools for training seamen, without costing the government a dollar, or imposing any tax upon the people.

If the codfishermen rendered the country great and gallant services in her wars, they may justly claim her praise, but not her bounty, or tribute money, exacted from other patriotic fishermen, mariners, and soldiers. They realized in both wars rich harvests in prize money, and were better compensated than the soldiers who fought as well for their country, and who might with better reason claim her bounties.

The fishermen have always been, and are now, more favored than any other class of our citizens. They complained of the duty on salt; they were relieved of that by drawback, and allowance in lieu of drawback, and at this day the salt duty is only about one cent and a half per bushel. They complained of other duties, imposts, and taxes; some of which have been repealed, and others are but nominal. They complained of want of privilege of fishing on the coast of the British provinces, and dry-curing their fish on land; that is now secured to them by our reciprocity treaty with Great Britain. They complained of want of a market for their fish; they have now a home market for all the fish they can take, and near thirty millions of purchasers. They complained of the difficulties of their coast; they are now better guarded against its dangers by lights, life-boats, revenue cutters, &c., than the people on any other part of our coast. Besides, many of them are ship-builders, and many are coasters, and they enjoy a monopoly, both of ship-building and of coast-trading. The government has lavished upon them its favors, in the way of drawbacks, exemption from duties, reduction of duties, and monopolies, and yet, it is said, it will be dealing hard with them to take from them this bounty, which they have enjoyed for thirty years.

The committee do not think it expedient or just to levy contributions on all other kinds of labor for the support of the codfisheries; and, if both expedient and just, they hold with Mr. Jefferson, Mr. Madison, and, indeed, nearly all those who aided in 1792 in adopting

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the system of allowance on tonnage which now exists, that the fisheries should not draw support from the treasury because it is unconstitutional. They have found no advocate of the constitutionality of bounties at that period, but General Hamilton, who derived it from the power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and *general welfare.*" Mr. Madison, in reply, effectually refuted this argument, and exploded the "general welfare" doctrine; declaring that it was "never before entertained by the friends or enemies of the government;" and that, if accepted, "everything, from the highest object of State legislation down to the most minute object of police, would be thrown under the power of Congress," * * "and might be called, if Congress pleased, provisions for the general welfare."

The committee append tabular statements from the Treasury Department of the tonnage, crews, allowances, and bounties, of the fisheries; allowances paid to each State; vessels, men, and tonnage in the fisheries of each State; rate of duty on salt for a period of years, &c.

In conclusion, the committee propose two amendments, and recommend that the bill, as amended, be passed by the Senate.

1.

TREASURY DEPARTMENT,
January 6, 1858.

SIR: I have the honor to acknowledge your letter of the 5th instant, inclosing a bill repealing all laws or parts of laws allowing bounties to vessels employed in the Bank or other codfisheries, and a resolution of the legislature of the State of Maine in relation to the bounty on codfisheries. You request any information in this department concerning the measure, and also my own views respecting the same.

Allow me to refer you to a letter dated the 2d of January last, addressed to you by my predecessor, which embraces the results of an examination made here, and to the report of an agent appointed to examine into this subject in the districts where this fishery is carried on, appended to the annual report of my predecessor of 6th December, 1853, for the information you request.

It would seem that the grounds upon which the fishing bounty was given by law have ceased to exist. The amounts annually paid out of the treasury on account of this bounty now exceed the entire sums received for duties on salt imported and consumed for all purposes whatever.

In his report, before referred to, my predecessor recommended that the fishing bounty be repealed, and I concur in that recommendation.

The papers inclosed with your letter are herewith returned.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, JR.,
Chairman Committee on Commerce, Senate U. S.

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2.

TREASURY DEPARTMENT,
January 2, 1857.

SIR: Agreeably to your request, I herewith inclose a synopsis of the legislation on the subject of bounty to vessels engaged in the cod-fishery.

It is apparent, from the slightest glance at these provisions, that they were not intended to foster that pursuit, but simply to relieve that fishery from the burden imposed on it by the salt duty. In 1792, when this system commenced, all the salt used in this country was imported, and was subject to duty. Vast quantities of this salt were then employed in curing codfish to be dried for exportation. It was a leading pursuit on the eastern Atlantic coast, and furnished the country with one of its principal staples for foreign commerce. The guards required by the drawback laws would subject the codfishery to impracticable details to enable it to reclaim the duty on the salt necessarily consumed. The only just and effectual mode which could be devised for indemnifying the fishery against this burden of duty was to give a bounty on the tonnage employed, graduated according to the quantity of salt consumed by each class of vessels.

The only feature in the bounty laws which can be regarded as intended to afford the slightest encouragement to the codfishery is that which provides that no bounty shall be allowed to any vessel unless the crew are compensated according to the quantity of fish caught by each man. This provision was not, probably, intended as an encouragement to the fishery, but to promote rivalry and enterprise among the crew; that the mere fact that the vessel had a crew on board should not be sufficient, unless they diligently followed the fishery, which this condition was well calculated to effect.

It will be seen that the original bounty law of 1792 was repealed with the salt duty in 1807. When the duty on salt was reimposed in 1813, in consequence of the then existing war, the former bounty laws were reënacted with similar conditions.

When the bounties were increased to their present rate per ton on fishing vessels, by act of 3d March, 1819, the duty on salt, under the act of 27th April, 1816, was 20 cents for every 56 pounds.

The present duty, under the act of 1846, is 20 per cent. ad valorem, which, on the importation of 15,405,864 bushels last year, valued at $1,991,065 by the custom-house books, makes the duty within a fraction of 2.57 cents per bushel.

It is to be understood that since 1792, the date of the original law, a revolution has occurred in the mode and object of the fisheries. There was then no mackerel-fishery; it is now more extensive and important than the codfishery. Many of the vessels under codfishing licenses are employed in catching fish, not for dry-curing under the bounty laws, but for sale in a fresh condition, being preserved in ice for consumption in that state in the cities, as well as throughout the interior of the country, to which it is carried by means of the railroads. The great change which has taken place of late years in the manner

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and purpose of the fisheries, has led, not to the encouragement of the codfishery under the bounty laws, but to the commission of perjuries for the purpose of obtaining bounty under those laws. Hundreds of vessels, on board of which no fish were caught for dry-curing, which is essential to entitle them to bounty, have claimed and been allowed upon false statements, as has been subsequently made apparent.

Representations of this abuse being made to this department, the existing laws and regulations were brought together into the circular of February 20, 1852, which was sent to the collectors for strict enforcement.

Immediately on the promulgation of this circular, a committee from the fishing interest at Glouster, Massachusetts, one of the principal fishing districts of the country, appeared here and represented that, should this circular be rigidly enforced, no bounties could be paid.

Among other objections to its provisions, they stated that the mode of carrying on the fisheries had essentially changed; that few or none of the fishermen at the present time were in fact compensated in the mode required. It was also represented that in former times, when codfish alone possessed commercial value, all other fish which might happen to be caught were thrown overboard; but now, when halibut, and other fish caught on the same grounds with cod are taken, they cannot be thrown away, as some of them are more valuable in the markets than cod, and it was a great hardship to refuse bounty to vessels which might happen to take such fish and to preserve them fresh for sale. This department was appealed to for relief. The records of 1851 and 1852 contain an extensive correspondence with collectors, urging such relaxation as might enable them to pay bounties to such vessels.

Having no power to repeal the conditions annexed by law to the allowance of bounties, this could not be done; but it appears that the bounties were claimed and paid upon formal proofs duly made up as required by the circular.

Many of the vessels to which bounties are paid upon proofs prepared in conformity with the regulations, beyond all doubt, are manned by crews compensated in a different mode from that required by law; and probably the fishery pursued is not exclusively for codfish for the purpose of dry-curing, as contemplated by all the provisions of the bounty laws. Under this state of things, an important question of expediency, as well as of morality, arises, since these laws, instead of furnishing encouragement for seamen, mainly encourage the commission of multiplied perjuries, and tend to the demoralization of a large class of the community.

Several indictments for perjury committed in making up these proofs have been tried within two or three years, which have generally resulted in acquittal, it being found in some sections of the country difficult, if not impossible, to convict for perjury on false custom-house oaths. Further facts and considerations on this subject may be found in my annual report on the finances of 6th December, 1853, and in

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the report of J. Ross Browne, esq., accompanying the same, to which I beg leave to respectfully refer you.

Very respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Senate of the United States.

3.

TREASURY DEPARTMENT, *January* 23, 1860.

SIR: In compliance with the request of your letter of the 3d ult., I have the honor to inclose herewith the official statements of the Register of the Treasury, "showing the number of vessels, men, and tonnage employed in the whale, cod, and mackerel fisheries; the allowances paid to fishing vessels; the bounty on salted provisions, and pickled fish, together with the number and cost of maintenance and revenue cutters stationed in the fishing districts."

Also a statement of the amount of allowances paid to each State, and the number of vessels, men, and tonnage employed in the fisheries of each State during the year 1859; together with the rate of duty on salt.

In regard to your request for further information in general terms, I beg leave to state that my views have undergone no change since my last communication to the Committee on Commerce on this subject, but the opinions therein expressed are more confirmed.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, Jr.,
Chairman of Committee on Commerce Senate U. S.

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A.

Synopsis of vessels and tonnage, men employed, capital invested, fish taken, and gross proceeds of cod and mackerel fisheries of Massachusetts, (extracted from Industry of Massachusetts,) for the year ending June 1, 1855.

Names of ports.	Page of book.	Number of vessels employed.	Tonnage.	Number of men employed.	Amount of capital invested.	Value of mackerel.	Value of cod.	Value of oil.	Aggregate value.	Per ct. of gross earnings on capital.
Barnstable	2	17	1,300	160	$38,500	$4,400	$29,000	.....	$33,400	87
Brewster	3	3	210	30	4,000	10,000	.....	$50	10,050	250
Chatham	5	27	1,880	230	30,000	24,000	45,000	.....	69,000	230
Dennis	16	48	2,130	560	96,000	77,252	42,000	.....	119,252	124
Eartham	7	3	168	30	6,000	7,500	800	.....	8,300	138
Hanride	10	28	2,040	280	86,000	45,600	17,400	.....	63,000	73
Provincetown	13	97	8,495	873	388,000	60,000	246,875	400	307,275	80
Wellfleet	17	80	5,935	894	220,175	129,000	27,716	.....	156,716	71
Yarmouth	18	15	1,035	170	33,681	9,082	9,350	.....	18,432	55
Beverley	116	48	3,689	384	152,000	1,500	108,600	50	110,150	72
Gloucester	126	282	19,374	2,820	969,250	388,809	293,850	1,090	683,679	70
Manchester	144	10	549	71	16,400	.....	16,325	.....	16,325	99
Marblehead	145	45	3,805	280	138,050	.....	163,764	7,217	170,981	124
Nahant	149	4	150	30	4,000	4,000	6,000	300	10,300	258
Newburyport	153	56	3,857	665	138,000	86,000	30,000	9,000	125,000	91
Rockport	157	65	1,895	357	46,250	33,182	53,000	7,392	93,574	202
Swampscot	167	39	1,000	226	689,150	50,000	196,560	5,300	251,860	37
Duxbury	417	11	447	64	11,800	14,960	6,811	.....	21,771	18
Hingham	428	20	1,495	264	59,785	44,364	4,500	.....	48,864	82
Kingston	430	10	1,049	86	40,000	.....	22,700	.....	22,700	57
Plymouth	441	53	3,778	412	195,000	.....	90,606	5,300	95,906	49
Boston	458	89	7,100	1,000	260,000	287,000	.....	30,000	317,000	121
Total	.....	1,050	71,372	9,756	3,638,041	1,276,649	1,410,857	66,029	2,753,535	(*)

(*) Average nearly 76 per cent.

NOTE.—These proceeds do not include the bounty, or, it seems, the value of the fish sold fresh, which is not reported except at Rockport, where it amounted to $15,750.
The same report gives 473,743 bushels of salt used in the fisheries, the duty on which, at 2½ cents, would have been $11,843 57, less than one-third of one per cent. on capital invested.

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B.

Condensed statement exhibiting the number of vessels, men, and tonnage employed in the whale, cod, and mackerel fisheries; allowances paid to fishing vessels; bounty on salted provisions and pickled fish; and duties on salt consumed, annually, from the commencement of the government to the 30th June, 1859; with the number and cost of maintenance of revenue cutters stationed at the fishing districts during the last ten years.

Years.	WHALE-FISHERY.			CODFISHERY.			MACKEREL-FISHERY.			Allowances paid to fishing vessels.	Bounty on salted provisions and pickled fish.	Duties on salt consumed.	REVENUE CUTTERS.	
	Estimated number of vessels.	Tonnage.	Estimated number of crew.	Estimated number of vessels.	Tonnage.	Estimated number of crew.	Estimated number of vessels.	Tonnage.	Estimated number of crew.				Number of vessels.	Cost of maint'nance.
1791											$29,683			
1792											44,772			
1793										$72,968	16,731			
1794										93,765	13,767			
1795										66,282	14,855			
1796										76,889	16,999			
1797										80,465	12,309			
1798										94,688	19,220			
1799										128,607	20,769			
1800										87,855	18,325			
1801										74,520	28,586	$576,361		
1802										104,448	29,701	648,847		
1803										117,173	34,790	552,130		
1804										145,988	46,923	487,848		
1805										152,927	37,746	563,291		
1806										162,190	37,134	686,820		
1807										161,253	27,414	515,920		
1808										143,716	17,941			
1809										47,165	2,494			
1810										3,406	508			
1811											784			
1812														
1813														
1814												75,822		
1815	4	1,230	98	530	26,510	3,711				1,811		853,637		
1816	4	1,168	93	757	37,879	5,303				84,735	584	984,694		
1817	17	5,294	317	1,078	53,990	7,558				119,915	4,427	461,842		
1818	55	16,549	1,393	1,170	58,552	8,190				148,918	5,672	550,479		
1819	108	32,387	2,590	1,300	65,045	9,105				161,622	5,477	585,179		
1820	191	36,444	2,915	1,216	60,843	8,517				197,833	11,169	803,914		

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1821	93	9[illegible],005	2,320	1,026	51,351	7,189				170,054	11,108	694,369			
1822	160	48,083	3,848	1,168	58,405	8,176				149,897	10,158	707,665			
1823	135	40,504	3,240	1,340	67,041	9,385				176,711	10,939	889,948			
1824	111	33,346	2,667	1,364	68,239	9,552				197,179	10,092	618,410			
1825	118	35,379	2,830	1,412	70,698	9,886				198,798	10,561	707,475			
1826	140	41,984	3,358	1,270	63,535	8,894				215,860	13,640	690,923			
1827	153	45,992	3,679	1,474	73,710	10,318				206,185	8,879	851,031			
1828	188	56,631	4,529	1,498	74,946	10,491				239,147	9,096	785,030			
1829	191	57,284	4,583	1,956	97,889	13,704				261,071	9,008	1,180,231			
1830	139	39,705	3,176	1,160	58,041	8,125	599	35,973	4,772	197,641	9,073	1,054,436			
1831	976	82,798	6,623	1,144	57,239	8,013	770	46,211	6,160	199,631	13,400	825,330			
1832	944	73,946	5,659	1,034	51,725	7,240	790	47,498	6,320	219,747	14,392	1,092,395			
1833	339	101,637	8,130	1,170	58,569	8,198	812	48,725	6,496	245,183	13,284	677,810			
1834	381	108,493	8,673	1,049	52,473	7,345	1,018	61,082	8,144	218,220	10,852	555,404			
1835	381	108,493	8,673	1,049	52,473	7,345	1,018	61,082	8,144	223,787	9,537	487,532			
1836	487	146,254	11,700	1,168	58,413	8,177	774	46,494	6,192	213,090	6,732	433,479			
1837	423	127,137	10,170	1,511	75,055	10,507	780	46,811	6,240	250,180	7,360	538,202			
1838	416	124,856	9,988	1,279	63,974	8,955	944	56,649	7,552	314,150	5,474	555,349			
1839	440	132,194	10,571	1,305	65,268	9,136	599	35,984	4,792	319,845	4,744	473,672			
1840	456	136,927	10,954	1,358	67,926	9,508	471	28,269	3,758	301,631	4,954	569,384			
1841	595	157,405	12,592	1,211	60,656	8,477	188	11,321	1,504	355,141	4,760	468,907			
1842	506	151,990	11,159	988	49,940	6,991	968	16,097	2,144	235,613	5,629	388,965			
1843	598	152,517	12,201	1,098	54,901	7,686	196	11,776	1,568	169,934	3,315	433,403			
1844	562	168,614	13,488	1,562	78,179	10,943	269	16,171	2,152	249,075	6,664	654,881			
1845	636	190,903	15,272	1,396	69,826	9,774	357	21,413	2,856	289,839	4,174	678,069			
1846	625	187,420	14,993	1,450	72,516	10,151	608	36,463	4,864	274,944	5,541	509,244			
1847	646	193,859	15,508	1,402	70,178	9,823	524	31,451	4,192	276,427	6,488	992,892			
1848	645	192,613	15,408	1,653	82,652	11,571	726	43,559	5,808	243,434	748	905,531			
1849	600	180,187	14,415	1,477	73,882	10,342	716	42,942	5,728	287,604	68	284,906			
1850	487	146,017	11,608	1,712	85,646	11,990	968	58,112	7,744	286,796	.....	245,503	*4		$16,969
1851	605	181,645	14,531	1,749	87,476	12,245	842	50,539	6,736	328,267	.....	205,060	4		20,913
1852	646	193,798	15,502	2,053	102,659	14,371	1,209	72,546	9,672	304,569	.....	220,478	4		30,969
1853	644	193,203	15,456	1,999	99,990	13,997	997	59,850	7,976	323,199	.....	208,315	4		23,423
1854	606	181,901	14,552	2,043	102,194	14,306	584	35,041	4,672	374,286	.....	258,195	4		34,434
1855	623	186,848	14,947	2,058	102,928	14,408	360	21,625	2,880	346,196	.....	338,517	4		49,095
1856	631	189,461	15,156	1,916	95,816	13,413	498	29,886	3,984	†271,838	.....	390,856	4		39,106
1857	816	195,772	19,584	1,935	104,573	13,545	525	28,328	4,200	†464,178	.....	398,273	4		54,179
1858	662	198,594	15,888	2,385	119,254	16,695	493	29,594	3,944	389,500	.....	‡165,321	4		45,861
1859	619	185,728	14,856	2,583	129,637	18,151	451	27,070	3,608	426,962	.....	190,965	4		35,300
Total	17,125	5,090,274	409,821	64,476	3,232,520	451,407	19,354	1,158,422	154,802	12,944,998	‖728,756	29,053,133	40		350,949

* Stationed at Passamaquoddy, Portland, Boston, and New London.
† *Changed* by reason of corrections upon final settlements of accounts.
‡ Rate of duty on salt, under tariff of 1857, 15 per centum.

‖ 1791 to 1811, inclusive, bounty on salted provisions and pickled fish..... $470,771
1816 to 1849, inclusive, bounty on pickled fish only..... 257,985

728,756

TREASURY DEPARTMENT, *Register's Office, January* 22, 1860.

F. BIGGER *Register.*

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Statement showing the amount of allowance paid to each State.

Maine	$4,175,050
New Hampshire	563,134
Massachusetts	7,926,273
Connecticut	182,853
Rhode Island	78,890
New York	18,319
Virginia	479
Total	12,944,998

Number of vessels, men, and tonnage in the whale, cod, and mackerel fisheries during the year 1859 belonging to each State.

States.	Whale-fishery.			Codfishery.			Mackerel-fishery.			Total.		
	Estimated No. of vessels.	Tonnage.	Estimated No. of crew.	Estimated No. of vessels.	Tonnage.	Estimated No. of crew.	Estimated No. of vessels.	Tonnage.	Estimated No. of crew.	Estimated No. of vessels.	Tonnage.	Estimated No. of crew.
Maine	....	.....	.....	1,269	63,477	8,883	163	9,814	1,304	1,432	73,291	10,187
New Hampshire	....	.....	.....	43	2,137	301	4	218	32	47	2,355	333
Massachusetts	514	154,049	12,336	1,138	56,919	7,966	284	17,038	2,272	1,936	228,006	22,574
Rhode Island	19	5,708	456	10	475	70	....	.....	.....	29	6,183	596
Connecticut	57	17,213	1,368	125	6,228	875	....	.....	.....	182	23,441	2,243
New York	29	8,758	696	8	401	56	....	.....	.....	37	9,159	752
Total	619	185,728	14,856	2,593	129,637	18,151	451	27,070	3,608	3,663	342,435	36,615

NOTE.—The returns of tonnage in the mackerel-fisheries were not required to be made separate from the cod-fishery prior to 1830.

F. BIGGER, *Register.*

TREASURY DEPARTMENT, *Register's Office, January* 22, 1860.

Statement exhibiting the rate of duty on salt consumed in the United States for the following years.

Nine months to June 30, 1843	8 cents per bushel of 56 lbs	Specific
Year ending June 30, 1844	8 do	do
1845	8 do	do
1846	8 do	do
Five months to November 30, 1846	8 do	do
Seven months to June 30, 1847	2.59 do	Ad valorem
Year ending June 30, 1848	2.30 do	do
1849	2.46 do	do
1850	2.19 do	do
1851	2.40 do	do
1852	2.18 do	do
1853	2.07 do	do
1854	2.55 do	do
1855	2.63 do	do
1856	2.55 do	do
1857	2.33 do	do
1858	1.65 do	do
1859	1.54 do	do

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 42.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. THOMSON made the following

REPORT.

[To accompany Bill S. 151.]

The Committee on Pensions, to whom was referred the petition of Ebenezer Ricker, of the State of Maine, praying to be allowed a pension on account of a wound received while in the military service of the United States, having had the same under consideration, submit the following report:

That the said petition was before the Committee on Pensions the first session of the 35th Congress, where it received a favorable report, which your committee adopt, and report a bill for his relief:

That the petitioner enlisted as a private in the army of the United States, and was attached to company A, 2d regiment United States dragoons, commanded by Captain G. A. H. Blake, on the 16th of October, 1839. He was made a corporal. In the month of May, 1840, he was put in charge of the guard, guarding the baggage train passing along St. John's river, in Florida. While in said service, in the line of his duty, he had occasion to take his carbine from its resting place in the saddle, when it was accidentally discharged, and the ball passed through his left wrist. The consequences of this wound were a permanent disability, and it has totally disqualified him from procuring his subsistence by manual labor.

The committee, therefore, report a bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 43.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. BIGLER made the following

REPORT.

[To accompany Bill S. 154.]

The Committee on Patents and the Patent Office, to whom was referred the memorial of Randall Pegg, report as follows:

The petitioner was employed by the late Robert Mills, superintendent and architect of the public buildings, as a watchman at the Patent Office extension, for which service he received less compensation per day than that paid by the government to other watchmen, and he now asks Congress to allow him the difference between the pay actually received and the compensation allowed to others for similar service.

The petitioner was employed on the 23d day of March, 1849, and from that time until the 1st of October, 1850, was paid at the rate of $1 per day; from this date until the 31st of May, 1851, at the rate of $1 25 per day; and subsequently at $1 40 per day. Mr. Mills certifies that the petitioner's "pay per diem was to be what was the customary allowance by the government for such service," but as the commissioner paid the rolls, he did not notice the difference in the pay. The Acting Commissioner of the Patent Office states that the pay of watchmen during the years 1849 and 1850 was $1 50 per day. It appears, also, that on the 30th day of September, 1850, a law was passed fixing the pay of all watchmen in the executive departments at $500 per annum. The committee are of the opinion that, under the terms of his engagement, the petitioner should have received the pay allowed to other watchmen, and recommend the passage of an act to pay him the difference between the amount received and $1 50 per day from the date of his employment to the passage of the act fixing the compensation of watchmen; after the 30th of September, 1850, to be allowed the compensation authorized by the act of that date, and report a bill accordingly allowing $199.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. RICE made the following

REPORT.

[To accompany Bill S. 28.]

The Committee on Post Offices and Post Roads, to whom was referred Senate bill No. 28, entitled "An act making an appropriation for the erection in the city of Saint Paul, State of Minnesota, a suitable building for custom-house, post office, court rooms, and other offices of the United States, have had the same under consideration, and respectfully report:

That it appears that the rooms now occupied by the United States district court at St. Paul are inconvenient, badly ventilated, and illy lighted. That the court room is in the third story next to the roof, and very small in its dimensions, with no accommodations for the grand and petit jurors when both panels are in court, and without proper and convenient places for criminals and witnesses during trial; and moreover it is believed that it would be a matter of economy to the government to erect a suitable building for the use of the federal offices at that point, as the sum now paid for rent for the several government offices in the city of St. Paul would be equivalent to the interest upon a large amount.

From authentic source the committee learn that the rent of the surveyor general's office is $800 per annum, and that of the rooms for the court and its officers the same; there is paid also for rent of rooms occupied by the superintendent of Indian affairs $300 per annum—making in all $1,900 per year.

The committee also learn that the amount appropriated for the present fiscal year, and to be disbursed by the superintendent of Indian affairs, having his office at St. Paul, is $332,733 33.

It appears to be a matter therefore of great importance that at all points where large amounts are annually disbursed by the government proper places should be provided for the safekeeping of its funds.

The committee furthermore learn, upon inquiry at the Post Office Department, that the business of the post office at St. Paul amounts to about $14,000 a year, and that it appears to be steadily increasing. The gross expenses of the office, as charged, amount to about $5,400 a year, of which sum $800 is for office rent.

It is deemed highly important by the department that the post offices should be kept in secure buildings, so as to insure the safety of

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the mails and public property from destruction by fire and the depredations of burglars.

The committee would here call attention to the following letter from the Acting Commissioner of the General Land Office:

GENERAL LAND OFFICE,
January 19, 1860.

SIR: In reply to your verbal inquiry of the 17th I have to inform you that the archives of the surveyor general's office at St. Paul, Minnesota, embrace original plats, field notes, and other evidence of survey, and all the correspondence relating thereto, of the lands in Minnesota, and a small portion of Wisconsin and Michigan Territories, reaching back to an early period, which were turned over from the old Cincinnati and Detroit offices. The destruction by fire, or other accident, of those important evidences of title, which lay at the foundation of the sales and other disposals of the public lands in the States named, would be almost irremediable, to say nothing of the great expense of renewing them, and would lead to great confusion, litigation, and pecuniary losses.

Their safety, therefore, is of the utmost importance, both to the government and the people of the States, and they should by no means be intrusted in frail buildings, which may be destroyed by fire in a night, with their contents, when by a trifling expenditure they may be placed in comparative security, and at the same time afford proper accommodation for the public officers, and facilitate the transaction of the public business.

I have the honor to be, your obedient servant,
JOS. S. WILSON,
Acting Commissioner.

Hon. H. M. RICE.

It will be perceived from the foregoing letter that there is evidently a strong desire on the part of the government relative to the occupancy of suitable buildings for the transaction of business, and for the safe-keeping of archives, and all matters of a governmental nature which it may be deemed of importance to preserve.

From a tabular statement furnished by the General Land Office, showing the cost to the United States of transporting money from the various land offices in Minnesota to the United States depository at Dubuque, Iowa, for the year ending December, 1857, it appears that $5,858 14 was allowed by the government for that purpose.

Should a proper depository be established at St. Paul, of course the expense of transporting money to that point from the different land offices in that region of country would be much less than it is now, as in that event the land officers in Minnesota would be no longer compelled to take the long and expensive journeys to Dubuque they are now required to do to make their deposits.

A letter was addressed to Mr. Guthrie, while Secretary of the Treasury, by Hon. Henry Dodge, chairman of the Committee on Commerce, relative to an appropriation for the construction, at St. Paul, of a building for custom-house, &c., and asking for such suggestions on the

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subject as he might think proper and conducive to the public interest. In Mr. Guthrie's reply the following remarks occur:

"I have to say that, in consequence of its great importance as a public depository, I should recommend the erection of a fire-proof building of stone for a public depository, custom-house, post office, court rooms, and other United States offices, 60 feet by 90 feet, and 56 feet high from the top of the under pinning to the eaves, having wrought iron girders, beams, shutters, stairways, roof, &c., for which there would be required an appropriation of $100,000, and 10 per cent. additional for contingencies, exclusive of the cost of site."

The committee do not believe that the offices now occupied by the government at St. Paul are of a safe and durable character, which the importance of the business transacted at that point would seem to require. Nor do they perceive that any immediate remedy can be applied in the premises, as it is believed that the offices are already located in the safest and most suitable places in the city. And in view of these facts, the committee would recommend, for the future protection of the property of the government at the city of St. Paul, that the appropriation asked for be granted for the purpose expressed in the bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 45.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. WILKINSON made the following

REPORT.

[To accompany bill S. 169.]

The Committee on Claims, to whom was referred the petition of Elijah R. Merrill, praying relief on account of injury received while at work for the government, report:

That, from the petition and the evidence submitted in this case, it is fully made to appear that the petitioner is now a resident of the county of Oxford, in the State of Maine; that in the month of October, in the year 1837, the petitioner was in the employ of the United States on Bangs' island, in Portland harbor; that while so employed the petitioner was, on the day above stated, engaged in the dangerous and hazardous work of blasting rocks, when a premature and sudden explosion of gunpowder accidentally took place, blowing the petitioner into the air; that in his descent he fell over a precipice of about twenty feet, from which he received very serious injuries, and was for a long time unable to be removed from the house into which he was taken.

It further appears, from the affidavit of his attending physician, that his left leg was badly dislocated, and shattered from the hip to the foot; that his spine was permanently injured and his left eye destroyed.

Another physician, a brother of Senator Fessenden, testified, fully confirming the statements of the other witness, and adds that the muscles of the left leg are withered, the left eye destroyed; and that the petitioner's injuries are such as to render him incapable to perform any hard labor.

It further appears from the testimony offered that the petitioner has a family dependent upon him for support, and that he has no resources except the proceeds of his labor.

The petitioner prays to be allowed such aid as in the opinion of Congress shall be fit and proper.

Cases similar to this have heretofore received the favorable action of Congress, they being regarded as a class of cases not provided for by the pension laws of the country. Under the pension system it seems to be an indispensable condition that the recipients of its benefits shall have been regularly received or enlisted into the military or naval service of the country.

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This case is similar to that of Miles Divine, which was before the last Congress. In the report of the Senate Committee on Claims the following language is used, which your committee adopt and approve: "While the committee concur fully in this wise policy of the government in regard to the granting of pensions, they think that cases may arise in which, by the exercise of a wise and humane discretion, Congress may properly interpose to relieve the necessities of persons in civil life who became disabled from providing for their own support by accidents incurred in the faithful services of the country."

In this case the service in which the petitioner was engaged at the time of his injury was a dangerous one; which fact commends his case more strongly to the discretion of Congress.

There is no good reason why the government should not extend its aid to those unfortunate persons who have become permanently disabled in the performance of its dangerous but necessary service. And such has heretofore been the action of Congress in such cases.

In 1847 Congress passed an act for the relief of James Jones, who received a severe injury while in the employment of the government as a rigger, although he had never enrolled or enlisted in the army or navy.

In the case of Peter Grover, which was a case quite similar to this, Congress passed an act, in the year 1857, appropriating for his relief the sum of $800.

In the same year an act was passed for the relief of James Harrington, as an indemnification for loss of time and expenses incurred during sickness caused by melting lead while in the employment of the United States.

The action of Congress heretofore fully establishes precedent in favor of granting relief in meritorious cases such as the one now before the committee.

In the reports in the several cases above referred to the principles herein set forth are fully recognized. In conformity with these views the committee report the accompanying bill, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. SAULSBURY made the following

REPORT.

[To accompany Bill S. 170.]

The Committee on Pensions, to whom was referred the petition of the legislature of Oregon, praying that a pension may be granted to H. H. Howard, a volunteer in the late Indian war in that Territory, (now State,) beg leave to report:

That it appears said Howard volunteered in repelling the ruthless savages, upon the call of Governor Curry, in compliance with the request of Major Haller, United States army, and that while marching into the enemy's country during the night, an accidental discharge of his gun, while mounting his horse, took effect in his right foot; and that having endured the suffering of his wound for nearly a year, it became necessary that his right leg should be amputated.

Isaac N. Smith, who was acting as quartermaster to the Oregon mounted volunteers, corroborates the above.

S. Kinsey, M. D., swears that "the disease under which he is now suffering, renders him entirely unfit for the duties of his ordinary business, and disables him for life." The committee, therefore, report a bill for his relief.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 47.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 83.]

The Committee on Pensions, to whom was referred the petition of Joseph Verbiski, praying to be allowed an increase of pension, beg leave to report:

That it appears the petitioner made application for an increase of pension at the second session of the 35th Congress, when the following report was made, which your committee beg leave to adopt:

That the petitioner enlisted in the United States army in October, 1851, as a private, and was attached to company I, second infantry. While engaged in firing a national salute at Fort Yuma, California, on the 4th of July, 1852, the accidental discharge of a cannon blew his left arm from his body, seriously injured his right arm, almost destroyed his power of speech, and otherwise so injured him that he is totally unfit for manual manner. He was honorably discharged from the army at San Diego, California, in January, 1853, when his name was placed upon the pension rolls, under the existing laws, at $8 per month, it being the largest amount to which he was so entitled. His injuries, received in the manner above stated, prevent him from engaging in any profitable employment, and he prays that his pension may be increased to $20 per month;

Among other considerations, it will be remembered that, for the purpose of removing the necessity for extraordinary or increased pensions in cases of peculiar hardship, military asylums were established in 1851, where the wounded soldier might pass the residue of life free from all its cares and vicissitudes. The petitioner is an inmate of that institution, where he surrenders his pension for a comfortable home, and is probably better provided for than he would be out of the institution, even with the increase of pension he now asks for.

The committee report that the prayer be not granted.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 48.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. CLAY submitted by the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Raymond Reynolds, a soldier of the war of 1812, *praying to be allowed a pension, beg leave to report:*

That the petitioner states he enlisted at Middlebury, Vermont, in February, 1814, in the 2d regiment United States dragoons, for the war, and served until the close thereof, when he was honorably discharged at Plattsburg, New York.

That in consequence of lying on the cold, wet ground, in Chazy, he contracted a severe rheumatic affection which afflicted him more or less for some years after the war. That he is now in the seventy-fourth year of his age, and unable to perform labor of any kind, and therefore asks a pension for life.

The petitioner furnishes no evidence of his disability, neither does he claim to be disabled except by age, and as there is no law or precedents for allowing pensions merely for *service* in the war of 1812, the committee, therefore, recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Harrison Sargent, praying for a pension, beg leave to report:

That the petitioner represents that he served in the Louisiana volunteers, and that he was disabled while in service by disease contracted.

The rolls show that he served from May 8, to August 4, 1846; but they afford no evidence that he was sick or disabled while in the service.

On the 8th August, 1846, it appears he entered the naval service only four days subsequent to his discharge from the army, and continued therein until the 24th November, 1849; it is not, therefore, very probable that he would have been received into the naval service at that date unless he had been found free from any physical disability.

The only evidence of his sickness while in either the army or navy is shown by the following extract from the register of the Bureau of Medicine and Surgery, Navy Department:

"Harrison Sargent, ordinary seamen, was admitted into the naval hospital, Pensacola, from the United States steamer Mississippi, with 'fever,' on the 14th August, 1847, and was discharged 'cured,' September 13, 1847."

There is not the least evidence to sustain his petition, either from his officers or comrades; and the statements made in his memorial to Congress conflict with and contradict his letter of the 16th August, 1847, addressed to his parents while in the naval hospital at Pensacola; consequently no reliance can be placed upon either.

Your committee, therefore, report and recommend the adoption of the following resolution, to wit:

Resolved, That the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 50.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of William R. West, alias Mooney, praying Congress to grant him an invalid pension, have had the same under consideration, and submit the following report:

The petitioner states that he entered the service in August, 1814, for six months, and that in December, 1814, he was wounded in his left elbow joint by the accidental discharge of a gun. That he was substituted in the room and stead of William Babbett, alias Wright.

Upon reference to the rolls in the office of the Third Auditor, the name of William R. West, or William R. Mooney does not appear in the company in which he states he served. It also appears that William Babbett, for whom he claims to have been a substitute, served during the entire service of the company from the 7th day of August to the 10th day of December, 1814. The Auditor states that William Wright does not appear on the rolls.

No sufficient evidence has been furnished to disprove the accuracy of the rolls, and under the general laws no such testimony could be allowed. It further appears, that thirty-nine years elapsed before he applied for a pension.

Your committee, therefore, recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 51.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Charles McClosky, praying that the pension he now receives may be increased, beg leave to report:

That it appears that the petitioner, in the month of March, 1846, enlisted in company "F," 8th regiment United States infantry; that he was engaged in the battles of Palo Alto, Resaca de la Palma, Cerro Gordo, Contreras, Churubusco, and Chapultepec, and, at the latter, on the 13th of September, 1847, received "two gun-shot wounds; one in the left tibia, and one in the left side, breaking the eighth rib."

The petitioner is now in the receipt of a pension of eight dollars per month, which is the highest rate allowed to non-commissioned officers, musicians, and privates, for total disability; and, as your committee are not disposed to make an exception in this case, although satisfied of his meritorious services, they recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 52.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Emily L. Slaughter, widow of Commander A. G. Slaughter, praying a pension, beg leave to report:

That it appears that at the second session of the 33d Congress, the petitioner made application for a pension, and that the committee, after having had the same under consideration, submitted a report, which your committee beg leave in part to adopt:

"Commander Slaughter died of 'softening of the brain,' while on leave of absence. It is alleged that the disease was contracted in the line of duty, while cruising off the coast of Africa. The only evidence presented to sustain this allegation, is the opinion of the attending physicians that the disease was the result of service in an enervating climate. The records of the department afford no evidence as to the time when, or how the disease was contracted, and the surgeon of Commander Slaughter's ship is now on duty on the West India station.

"If it can be shown (which the committee think has not been satisfactorily done in these papers) that Commander Slaughter died of disease contracted in service, in the line of duty, the widow 'would be entitled under the general laws.' Upon presenting the proper proofs at the Pension office, the claim, so far as it accords with the pension laws, will be allowed without the interference of any special legislation.

"The committee ask to be discharged from the further consideration of the petition."

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 53.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Peter Joseph, praying an increase of pension, beg leave to report:

That it appears from the official records that the petitioner, then attached to the United States ship Congress, "was wounded severely in a sharp skirmish with the Mexicans on shore, about four or five miles from Mazatlan, during the night of the 19th November, 1847," in consequence of which his left fore-arm was amputated the next day.

He is now in the receipt of six dollars per month, which is the highest rate of pension allowed to a seaman for total disability. He now asks that his stipend be increased to twenty dollars per month.

The loss of his arm might be evidence of a just claim upon the part of the petitioner, yet in the absence of a change in the general law, this case cannot be distinguished from others equally meritorious.

Your committee, therefore, recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.



February 14, 1860.—Ordered to be printed.

Mr. Bragg submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of Mrs. Ann E. T. Partridge, widow of Captain Alden Partridge, have had the same under consideration, and submit the following report:

The petitioner sets forth in her petition, that her late husband, being an officer in the army of the United States, was appointed superintendent of the West Point Military Academy, at an early and important period in the history of that institution, and that while acting as superintendent, he also discharged the *extra* duties of instructor of military tactics and artillery. That these services were of the most arduous kind, and that they were rendered peculiarly so by the then condition of the country, and the consequent inadequate provision made for the support of the institution; and that, for the extra services performed, her husband received no compensation.

She now asks that such compensation may be made to herself and only son, as Congress may deem to be due for her husband's unrequited labors and personal sacrifices.

It appears that the husband of the petitioner was a lieutenant of engineers, and that as early as the year 1806 he was ordered to West Point to discharge the duties of assistant instructor in mathematics; that in 1808 he was appointed superintendent of the institution, and that he continued to act as such until some time in the year 1817, having, in the meantime, been promoted to a captaincy in his corps.

It further appears, from a memorial addressed to Congress, but which seems never to have been presented by Captain Partridge, and which is filed with the petition in this case, that he claimed for *extra* services as assistant and principal professor of mathematics, assistant deputy quartermaster of the post, and for transportation of baggage, the sum of six hundred and eighteen dollars, ($618,) and that this claim was submitted to the Secretary of War about the year 1816, who declined to allow the same on the ground that there was no law under and by virtue of which the same could be allowed.

With the exception of some letters, filed also with the petition, referring in general terms to the valuable and important services rendered by Captain Partridge while acting as superintendent, there is no

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evidence to establish the facts that the particular services for which *extra* compensation is now claimed were rendered, or if so rendered, that in the then state of the institution they were *extra* services, and might not have been properly required without extra compensation of any officer of the engineer corps occupying the position which had been assigned to Captain Partridge.

The committee, however, entertain no doubt that Captain Partridge rendered very valuable services in organizing the institution, and conducting it safely and successfully through many of its early difficulties. He took charge of it in its infancy, with scarce a dozen young men as cadets. He left it at the end of nine years' service in a high state of prosperity, having brought system and order out of disorder, and laying broadly and firmly the foundations upon which its subsequent usefulness has been built up.

The committee, therefore, would feel justified in recommending to the liberality of Congress the claim of the widow and son of one who they are satisfied rendered very valuable services to the country, and who, perhaps, was but poorly and inadequately requited for them, did they not feel assured that the granting of the prayer of the petitioner would open wide the door for the presentation of innumerable claims of a like character.

They respectfully recommend, therefore, that the prayer of the petitioner be rejected.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 55.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1860.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. 119.]

The Committee on Military Affairs and the Militia, to whom was referred Senate bill No. 119, *having had the same under consideration, report:*

This bill is for the relief of A. M. Mitchell, late a colonel of Ohio volunteers in the war with Mexico, and provides for the payment of transportation of himself and servant from Monterey to Cincinnati and back in November, 1846, while suffering from wound received in the storming of Monterey.

It appears that Colonel Mitchell was severely wounded on the 21st September, 1846, and on the 10th November, 1846, Major General Taylor granted him a leave of absence for sixty days, "for the benefit of his health impaired by severe wounds received in action." During this leave Colonel Mitchell repaired to his home in Cincinnati, where he remained until he was able to walk, when he returned to Monterey.

It does not appear that any claim has heretofore been made for this reimbursement, and at this time there are no funds in the possession of the department applicable to its payment. The amount claimed by Colonel Mitchell is $759.

During the Mexican war officers of the army, both sick and wounded, were sometimes ordered to the United States, and in such cases transportation was always furnished or it was commuted. The committee report the bill back to the Senate, with an amendment, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1860.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of Theodore J. Eckerson, having had the same under consideration, report:

The petitioner prays that his salary, now fixed by the law of February 21, 1857, at $1,490 per annum, be made $2,500 a year, the same as that of the naval storekeeper at Mare island, in California. The petition is accompanied by numerous certificates as to the inadequacy of the present pay of that officer, and it is obvious that $1,490 a year is not sufficient for the support of a family where the expense of living is as great as it is represented to be at Benecia, but there would be an impropriety in increasing the pay of this military storekeeper beyond that of officers of the army of superior rank.

A captain of ordnance receives about $1,650, and a lieutenant about $1,450 a year, and the increase asked in this case would make the pay of the military storekeeper in California more than fifty per cent. above that of a captain, and nearly a hundred per cent. above that of a lieutenant.

The committee report that the prayer of the petitioner be refused.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 57.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. GRIMES made the following

REPORT.

[To accompany Bill S. 182.]

The Committee on Pensions to whom was referred the petition of Nicholas Underhill, a soldier of the war of 1812, *having had the same under consideration, beg leave to report:*

That the petitioner states that he entered the service about the 1st September, 1814, as a sergeant, in Captain Underhill's company, New York militia, for three months, and was discharged about the 1st December following; and that while in service and in the line of his duty, he received a wound in his left arm by a pistol ball discharged by his lieutenant, while in the act of firing in front of his company, which was then on drill; that the said lieutenant's horse took alarm and wheeled suddenly, while he was in the act of firing; whereby, the ball passed into petitioner's arm.

Application for pension has been made to the Pension Office, but as the petitioner's name was not found upon the rolls, his claim was disallowed, although that office had allowed him a land warrant for one hundred and sixty acres upon parol testimony.

Daniel Dutcher, whose name is found on the rolls of Captain Underhill's company, and who also has received a land warrant for one hundred and sixty acres, testifies to, and corroborates the entire statement of the petitioner.

William Williams, who states that he was in the same company, testifies to the same. These witnesses and the petitioner are certified by the judge of Westchester county, New York, before whom the affidavits are made, to be credible and entitled to full credit and belief.

It is satisfactorily shown that the officers under whom the petitioner served, are now dead.

Two surgeons, certified to be reputable in their profession, describe the wound as stated in the declaration of the petitioner, and that he is one half disabled thereby.

The petitioner testifies that until he obtained his land warrant, he was not aware that any provision was made for granting pensions to the militia for injuries received. Evidence complete, 4th of April, 1859.

Your committee, upon a full examination of the evidence, are of the opinion that the claim to pension is meritorious; and therefore report a bill for his relief.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. GRIMES made the following

REPORT.

[To accompany Bill S. 183.]

The Committee on Pensions, to whom was referred the memorial of Cornelius Hughes, praying that the pension he now receives may be increased, beg leave to report:

That under a special act, approved 3d March, 1853, the memorialist was allowed a pension, at the rate of five dollars and thirty three and one third cents per month, for two thirds disability.

He now prays that his pension may be increased to eight dollars per month, on account of *total* disability.

Surgeons Kenney and Carson, who are certified to be reputable in their profession, declare, under oath, that he is totally disabled; consequently, had his original pension been granted under the general laws, he would have been allowed an increase under those laws, as the evidence of his total disability is satisfactory.

Your committee, therefore, report a bill for his relief.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. SAULSBURY made the following

REPORT.

[To accompany Bill S. 184.]

The Committee on Pensions, to whom was referred the petition of Rebecca A. Correl, widow of Isaac Correl, submitted the following:

That it appears at the second session of the 35th Congress, the petitioner applied for a pension; that the action of the committee was favorable, and that they submitted the accompanying report, which your committee beg leave to adopt, which is as follows:

"It appears from the evidence before the committee that the petitioner was married to the late Isaac Correll on the 7th day of July, 1842; that her husband enlisted at McVeytown, Mifflin county, Pennsylvania, on the 25th day of February, 1847, in the eleventh regiment of United States infantry, and went with said regiment to Mexico; that while in the service he was taken sick, in consequence of the exposure and hardships of the campaign, and honorably discharged for disability on the 14th of November, 1847; that returning home, he never recovered his health, but lingered till the month of June, 1852, when he died of the disease contracted in Mexico.

"The petitioner has heretofore applied to the Commissioner of Pensions for relief, and been refused a pension on the ground that her case does not come within the strict meaning of the laws. The objections to her claim are set forth in a letter from the Commissioner, dated January 11, 1859, which says:

"'A pension has not been allowed under the general laws, because the evidence adduced has not been deemed sufficient to show that the disease of which the husband died was contracted while in the military service and in the line of duty.'

"The fact that the petitioner's husband contracted the disease of which he died in the 'line of duty' appears sufficiently proved by the testimony of private Hall, Corporal Coulter, and Brevet Captain McCoy; and Captain Irwin's, commanding company D, is direct and positive, stating his firm belief that the disability for which the deceased was discharged, and from which he never recovered, resulted from the severe duty and great exposure of the campaign.

"Your committee are of opinion that the case is within the equity and spirit of the law, and therefore report a bill for the relief of the petitioner."

The committee report the accompanying bill for her relief.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 60.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. SAULSBURY made the following

REPORT.

[To accompany Bill S. 98.]

The Committee on Pensions, to whom was referred the bill for the relief of Mrs. Olivia W. Cannon, widow of Joseph S. Cannon, deceased, late a midshipman in the United States Navy, praying an extension of her pension, heretofore granted by Congress for the period of five years for life or widowhood, beg leave to report:

That it appears by the testimony accompanying the petition, and the following report, made at the last Congress, that the application of the petitioner is worthy of the favorable consideration of Congress; and the committee therefore report back the bill for her relief submitted in this case, with a recommendation that it do pass.

IN THE SENATE OF THE UNITED STATES, APRIL 15, 1856.

The Committee on Pensions, to whom was referred the memorial of Mrs. Olivia W. Cannon, widow of the late Midshipman Joseph S. Cannon, deceased, report:

It appears by evidence on file in the Pension Office, in connection with the papers upon which the late Midshipman Joseph S. Cannon was pensioned, that said Joseph S. Cannon was appointed midshipman on the 26th February, 1814, and commissioned by President Madison. Immediately upon receiving his commission, he was ordered to report himself for duty to the commandant of the naval station at Vergennes, Vermont, on Lake Champlain. He accordingly repaired at once to his post and entered upon active duty. On the 11th September, 1814, Midshipman Cannon became a participant in that memorable victory on Lake Champlain, under Commodore McDonough. For the gallant conduct he displayed on that occasion he, in common with other officers who also won for the American navy imperishable renown in that conflict, was voted a sword by Congress. This highly flattering testimonial was presented by the Navy Department, in appropriate terms, as will be seen by papers accompanying the memorial of his widow, who appeals for a pension, by virtue of her deceased husband's services.

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In addition to the presentation of a sword by Congress, the illustrious McDonough, under date of January 1, 1818, pays the following tribute to Midshipman Cannon: "I take great pleasure in testifying that the conduct of Midshipman Cannon, while under my command, and in action on Lake Champlain, on the 11th September, 1814, was that of the officer, seaman, and gentleman, and he well deserves the praise and attention of his government."

In 1817, Midshipman Cannon received orders to report himself on board of the schooner Asp, at Baltimore, Maryland, which vessel was about to sail for an expedition in surveying the southern coast. To this order he responded with the same alacrity displayed by him on former occasions, and, for upwards of seventeen months, amidst the most arduous duties consequent upon a faithful performance of the important task before himself and brother officers, Midshipman Cannon continued to labor with great assiduity in a climate to which his system was entirely unaccustomed. He underwent exposures by night and by day, the effect of which resulted in a deep-seated pulmonary disease, and from which, ultimately, he found an untimely death.

Shortly after Mr. Cannon's return with the remnant of his fellow officers of the surveying expedition, for it may be remarked that but two others, besides himself, survived the hardships of the service and ravages of the climate to which they were exposed, he applied for orders to rendezvous at the Philadelphia naval station, at which place, being near his home, he hoped to be able to recruit his impaired health, at the same time discharge such duties as the nature of his position on shore might demand. Unfortunately his request could not be granted, because there was no vacancy at that station at the time. Subsequently he was ordered to report himself for duty on various occasions and at various posts, but owing to continued and *increasing* ill health he was unable to respond to said orders, and was compelled, from time to time, to ask to be furloughed. To some of his requests the department assented, to others *dissented*. Not being able, therefore, for the reasons before stated, to meet the requirements of the department, Mr. Cannon was subjected to the operations of what seems to have been a very stringent and oppressive rule, and was consequently forced out of the service by dismissal; thereby deprived of all pay whatsoever, and with no other dependence for the support of himself and household than the charities of the world.

As evidence to show that Midshipman Cannon was unable to enter upon active duty after his return from the southern coast survey, Surgeon Harris, of the navy, now surgeon general, testifies, under date of March, 1828, that "such is his (Midshipman Cannon's) condition, that he is not able to attend to public or private duty;" and under date of August 30, 1827, Surgeon Harris says: "Midshipman Cannon has been seriously ill for several years with pulmonary affection, and I am of opinion that he is entirely incapable, with his present health, of attending to duty as an officer."

Midshipman Cannon was himself pensioned under a special act of Congress, but unfortunately survived but a short time to enjoy it.

Your committee herewith report a bill granting the petitioner five years' half pay, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. FOOT made the following

REPORT.

[To accompany Bill S. 189.]

The Committee on Claims, to whom was referred the memorial of Franklin Peale, having had the same under consideration, adopt the report of this committee made the 23d of May, 1856, and recommend the passage of the accompanying bill.

IN THE SENATE, *May* 23, 1856.

The Committee on Claims, to whom was referred the memorial of Franklin Peale, report:

From 1833 to 1854 the memorialist was employed in the United States Mint, at Philadelphia, occupying successively the positions of assistant assayer, melter and refiner, and chief coiner—all places of high trust and responsibility, and which appear to have been filled by Mr. Peale with great credit to himself and advantage to the government. During this period, as clearly appears from the papers in the case, Mr. Peale invented and brought into practical use many valuable improvements in the machinery and processes applicable to the refining and coining the precious metals.

The following are amongst the improvements introduced by Mr. Peale, for which compensation is claimed, viz:

First. The use of common salt in reducing silver from its solution in nitric acid.

John J. Morrell, foreman of the refinery, certifies that when Mr. Peale became melter and refiner, in 1836, in consequence of the necessity of precipitating silver by copper, the only process then in use, it was unhealthy and deleterious—so much so as to make it impossible to remain in the room and breathe the fumes without the risk of life. Soon after Mr. Peale came into the office he introduced improvements in the processes of refining, particularly the precipitation by salt and the recovery of fine silver by zinc and sulphuric acid, by which means the troubles above mentioned were entirely overcome and much greater facility given to the operation, both in regard to the economy and rapidity; which process still continues to be employed.

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Prof. Booth, the present melter and refiner, says: "The improvement which you (Mr. Peale) justly claim, of precipitating the chloride by common salt, instead of by muriatic acid, which the chemist employs on a small scale, was a positive advance in the whole process, in economy of material and apparatus, and in convenience of execution. By means of this improvement, I was enabled to employ wooden vessels, instead of the more costly stoneware and porcelain, when the subsequent influx of California gold assimilated our operations to those of an ordinary manufacturing establishment, and demanded precisely such an improvement. By means of this improvement, I have recovered a ton of silver in a single day, after its employment in refining gold."

Second. Invention and construction of machinery.—Devising and directing the construction of a power-press for coinage, and the application to it of steam power; the invention and construction of a milling machine, moved by steam power, which is now in use at all the mints; the invention of a laying and piling box, &c.

On this head, Mr. Bale, late treasurer of the mint, says: "An official service of several years, as treasurer of the mint, afforded me frequent opportunities to admire the perfection of the apparatus and machinery of that establishment. My own observations, and the concurrent testimony of my associates, left no doubt on my mind, that to [Mr. Peale] the country is mainly indebted for the perfection thus realized. I then learned, and firmly believe, that it was [his] inventive skill that planned and supervised the execution of nearly every part of the machinery which adorns the mint, among which I may refer, as examples, to the steam coining presses, the milling machine, the rolling mills, the piling board, and the small and large engines."

Mr. Eckert says: "As director of the mint I had ample opportunity of becoming familiar with his (Mr. Peale's) extraordinary inventive genius, and the facility with which he overcame and surmounted all the mechanical difficulties as they would present themselves, in the practical application of his inventions and improvements. In the substitution of steam, instead of hand-power to the coining presses alone, he has saved thousands upon thousands to the government, and it is but just that he should receive some compensation, especially as he has never availed himself of the patent laws."

Judge Kane, chairman of the assay board of the mint, says: "I have no hesitation in saying that Mr. Peale's improvements in the machinery alone, not to speak of the processes which he introduced, have saved the government hundreds of thousands of dollars."

George Eckfeltd, foreman of the machine shop of the mint, states that Mr. Peale, while he held the office of melter and refiner, drew the plans and directed the construction of the first press used in the mint for coinage by steam; for the engine employed in propelling the coining and milling machines; for the steam milling machine, and laying and piling boxes—all original inventions; and that he furnished designs and drawings, and directed the construction of the machinery for the branch mints generally; and, finally, that most of the improvements referred to are entitled to the merit of original inventions.

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From these and other statements before the committee, it is clearly apparent that the mechanical skill and genius of Mr. Peale contributed largely to the state of perfection to which the mechanical operations of the United States Mint has attained. When he entered the mint, in 1833, its capacity for coining was about $3,000,000 per annum, and when he left it, in 1854, its capacity was equal to $60,000,000 per annum. It was, evidently, no part of Mr. Peale's duty, as melter and refiner, to make the drawings and superintend the construction of the engines and machinery of the mint and its branches, and much less was it any part of that duty to give the government the great benefit of his rare inventive genius, by the application of which the mint of the United States has attained the reputation of being the best appointed mint in the world.

It is believed to be shown that many of the improvements introduced into the machinery of the mint were original inventions of Mr. Peale, and as such subject to be patented as his private property. But as these inventions were mainly useful in mint operations, his sense of honor did not permit him to appropriate to his exclusive private emolument the improvements required for the efficient operations of the mint, of which he was an officer, and with the honor and reputation of which he felt himself identified.

But as he has now retired from office, and is in need of the fruits of his labors, now enjoyed by the United States, for the support of his declining years, the committee are of opinion that it would not become a liberal and enlightened government to withhold a just and reasonable compensation for such long-continued, valuable, and meritorious services.

Mr. Peale submits the following estimate of the value of his inventions and services, for which no compensation has been received, viz:

For improvements and inventions in refining	$5,000
Apparatus in saving and concentrating sweep	5,000
Coining presses, mint machinery, &c	15,000
Services, not official, in making mint machinery and apparatus for branch mints	2,500
Use of the above processes and machines at the branches and offices	2,500
Total	30,000

In submitting this estimate, Mr. Peale says: "This estimate is made under the acknowledged conviction that it is entirely optional with the government to withhold any recompense, and that no claim could be established by law. Nevertheless, it is confidently affirmed that if I had, according to present usage, protected myself by securing the benefit the laws of the United States would have conferred, I should have demanded from four to ten times the amount, according to the circumstances and the exigencies of the particular case and time."

The memorial and accompanying "memorandum" of Mr. Peale,

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which are believed to present a fair and truthful statement of the grounds of the claim, are hereto annexed.

Believing that the services of the memorialist, beyond the proper sphere of his official duties, have been of essential and paramount value to the United States, the committee think that he is equitably entitled to some remuneration. But in view of the fact that the improvements were carried out and perfected at the expense of the government, they are not prepared to recommend the allowance of the full amount of their value, as estimated by the claimant and other officers of the mint. They have, therefore, come to the conclusion to report a bill, allowing the sum of $10,000 as a full compensation to the memorialist for all his inventions and extra official services in connection with the United States Mint and its branches.

To the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the undersigned, Franklin Peale, of the city of Philadelphia, respectfully showeth:

That from the year 1833 to the close of 1854 he was engaged in the service of the United States, in the various capacities of assistant assayer, melter and refiner, and chief coiner of the mint.

That during the time of such official relation to the Government he was the author of many original inventions and improvements in the machinery and processes applicable to the refining and coining of the precious metals, for a detailed statement whereof he refers to the memorandum hereunto annexed, which he asks to have received as a part of this memorial.

That these inventions and improvements were of such novelty and utility that he could have protected himself in the ownership thereof under the patent laws, but, in view of his official relations, he declined to do so, and consented to the gratuitous use thereof in the mint and branch mints of the United States. And although a change in his official relations has since taken place, which obviates the objections which might otherwise have been taken to his availing himself of his rights of patent, yet the lapse of time and the public use of his inventions and improvements have, as he is advised, debarred him from adopting that course.

Your memorialist avers that these inventions and improvements, and other extra official services performed by him, were of great pecuniary value to the Government, both directly and indirectly; that he has never received any compensation therefor, and that such compensation is justly due.

Wherefore your memorialist respectfully prays that an appropriation be made by your honorable body, in such sum as you may deem adequate for his remuneration, for the services thus gratuitously rendered to the government; such remuneration to be accepted by him in full for all further claims against the government or the public by reason of the inventions, improvements, or services in question.

And your memoralist will ever pray, &c.,

FRANKLIN PEALE.

Harvard College

Memorandum of the services of Franklin Peale, late chief coiner of the mint of the United States, which he deems extra official, of which the government has hitherto and now enjoys the benefit, and for which he has received no compensation.

Mr. Peale was employed on a special mission to Europe "connected with the affairs of the mint," with the title of assistant assayer. His instructions were dated May, 1833. He returned from his mission in 1835, and reported in full in writing, accompanied by drawings, on all the numerous and important matters that were deputed to him, and much more, and subsequently aided in introducing into practice all and every art and process deemed of value in the various departments of the mint. For these services no further compensation was ever or is now asked or expected. But other services, not connected with the foregoing, extra official in character, and for which he has received no compensation, were subsequently rendered by him, and will be as briefly as possible stated, as follows:

Whilst melter and refiner of the mint he introduced the new and most important process, still practiced in the mint and its branches, &c., of reducing silver from its solution in nitric acid by precipitation with chloride of sodium and its recovery by zinc and sulphuric acid.

The general principles of this process were communicated to him and practiced in the refinery of P. N. Johnson, of London, but the use of salt was proposed by Mr. Peale, and employed with great advantage in economy and otherwise over muriatic acid, which had been previously employed.

This process was entirely unknown and not included in the instructions above referred to. It was the acquisition of private and unofficial friendly relations, and partly original with Mr. Peale. It possessed the advantages of freedom from noxious vapors, and the return of pure silver, so useful in mint operations, over the famed sulphuric-acid process, for a knowledge of which a fee of 50,000 francs was asked by the principal refiner of Paris, and for which an appropriation of 10,000 francs was subsequently made and transmitted to Mr. Peale, but not used, and therefore saved to the government.

A full description, with illustrative drawings of the sulphuric acid process, are embodied in the report of Mr. Peale.

The zinc process, so comparatively valued, and put in practice by Mr. Peale in 1835–36, continues still in use in the various refineries of the mint and its branches, &c., an undoubted proof of its applicability and value.

Whilst melter and refiner, Mr. Peale divised and directed the construction of a power-press for coinage, and applied steam to its propulsion by means of an engine constructed by him, which engine remains to this day a model of perfection of workmanship and efficiency.

The press referred to has been improved and perfected during the long series of years that have since elapsed, until its efficiency is such as to place the presses of the mints of the United States far above those of the most advanced governments of the world, and they are now in

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use in all the establishments of the Union, and in other or others in South America.

Patents for the various improvements in the operative parts and general design would have secured to the inventor the benefit of his labors; no such protection has ever been sought, and the parent mint, as well as all others, have the sole benefit.

It may not be improper at this point to state that the buildings, machinery, and apparatus of the branch mints at New Orleans, Charlotte, and Dahlonega, have been constructed and put in operation, in a great measure, under the advice or direction of Mr. Peale, although not embraced in any of the duties prescribed by law as appertaining to the chief coiner.

Whilst melter and refiner, Mr. Peale invented a milling machine, moved by steam-power, in place of the very imperfect and inefficient hand machines, the only ones previously known in the mint; which machines he improved and perfected, until their efficiency is now such as to remove all impediment to the most rapid execution of this previously tedious process—an idea of which may be given by the statement that eight hundred pieces of the smaller denomination of coins, per minute, do not by any means limit the capability of one machine.

For the purpose of meeting the necessity of rapid supply to the above mentioned machines, and for other purposes very important in the manipulation of coin during its preparation, Mr. Peale invented the laying or piling box, a machine by means of which, in almost momentary time, planchets and coins may be laid in roleaux or piles, affording great facility for the above purposes, and producing in its use an effect more like that of magic than an ordinary one of simple agitation.

The Commissioner of Patents, soon after its invention, on witnessing the operation of this machine, urged the inventor to patent it both in this country and Europe; but, in accordance with the principles which have always governed his action whilst in office, he refrained from so doing, has never received any pecuniary benefit from his inventions, and has in consequence lost the protection that the law of patents would have insured to him.

At a very early period Mr. Peale became aware of the imperfect adaptation of the annealing furnaces of the mint, and from his knowledge of the forms of those used in the principal mints of Europe, and unsatisfactory trials of the best, he was induced to invent and successful, and are now in use in the various establishments of the erect others of entirely original forms, which have proved eminently government.

The counting board, in its primitive form, was patented by the administrator of the late R. Tyler, of the New Orleans branch, and the right purchased for use by the mint. The above named coiner was familiar with the original counting machine of Mr. Peale, a model of which is now, or was lately, preserved in the mint, made many years previously, which embraces the general principles of the machine.

The counting board was subsequently and to a very marked extent improved by Mr. Peale, and all the fixtures in connection with it are

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original with him. The facility and certainty with which it operates have been of incalculable value to the mint. It is only necessary to refer to that period when the passage of the "silver bill" caused a coinage of the smaller denominations of silver money, entirely unprecedented in mint affairs, the whole coinage amounting in 1853 to sixty-nine and three fourths millions of pieces. Nearly the whole labor of counting this enormous number was performed by two or three females and one man; without the intervention of the counting table, it would have required the labor of thirty-five or forty experienced counters to have met the exigencies of the service; in one day of twenty-two, out of twenty-four consecutive hours, eight hundred and fourteen thousand pieces were coined and counted, giving a striking illustration of the truth of the above statement.

Without the aid of the fixtures under notice, the enormous labor of the period referred to could not have been performed without a correspondently increased manual force, thereby increasing the expense and liability to error, and augmenting in an equal ratio the liability to another and greater evil, too obvious to need remark.

The balances for weighing the precious metals and other mint operations have received the devoted attention of Mr. Peale from the period of his first connection with the mint; those of the best construction then known were unsatisfactory, and it was after years of laborious experience and careful study, that he was enabled to perfect them so as to give uniform and certain, as well as delicate results to the weighings, upon the integrity of which all the value of mint operations depends, both as it regards its interior relations and those to the community at large. His efforts in this department have proved that the operations on heavy masses in weight, and of course in value, can, and have been made more accurately than when divided into smaller amounts—a fact that cannot be overestimated when such enormous values are under manipulation; they amounted in the coining department alone, in one year, to ninety-four millions of dollars, in gold only; in the weighing of which, economy of labor was all important, but to which may be added increased security from error.

The balances of the mint thus perfected were not only entirely satisfactory in use, but have served as models of construction; although original in design, and peculiar in detail, their use has been freely given to the mint and the public, a full description having been published by Mr. Peale in the July number of the Journal of the Franklin Institute of the State of Pennsylvania for the year 1847.

The exigency caused by the influx of gold from California was requied to be met; for this purpose Mr. Peale designed and executed, under his superintendance, a steam engine and rolling mill of peculiar construction, adapted to their specific objects. The rolling mill being new in design, dispensing entirely with the expensive gearing usually connected with them, and furnished with wheel work and dial plates for the regulation of the slips of rolled metal, giving greatly increased facility, as well as accuracy to this important operation.

The engine possesses novelties of form specially adapted to the object of its construction, and has been furnished with a "throttle-valve" of

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original form, devised by Mr. Peale to control its speed during the irregularities inherent in the rolling operations; a desideratum that was never before accomplished, although the best mechanicians have long made it their study, and numerous patents have been granted by the office for arrangements whose objects are those above stated.

For the purpose of reducing to its minimum the inevitable "*wastage*" attendant on the working of the precious metals, Mr. Peale invented an apparatus for filtering and recovering the minute particles usually lost by floating away with the water and other media employed in the washing, cleaning, and whitening of the coin during preparation, and for the purpose of concentrating and recovering the precious metals from the "*sweep*" of the establishment.

No exact value estimate can be made of this apparatus. It is sufficient to state, as a striking and significant fact, that a trial of it, in an incomplete state, in December, 1851, gave a saving of $271 62 worth of metal, during a period of ten months, from the washing of the hands of the female "adjusters" of coin.

The operations of the year 1852 amounted to $91,297,460 in the chief coiner's department, the legal limit of "*wastage*" on which was $136,946 19, the actual wastage only $7,246 14. This extremely small ratio of loss may very justly, in a great measure, be attributed to the use of the apparatus referred to, and is cited in evidence of its value to the institution.

FRANKLIN PEALE.

CITY OF PHILADELPHIA, *ss:*

Sworn and subscribed, before me, April 22, 1856.

JOHN THOMPSON, *Alderman.*

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 191.]

The Committee on Claims, to whom was referred the petition of George M. Weston, commissioner of the State of Maine, report:

That the several claimants therein represented show title to thirty-two thousand and forty acres of land, comprehended in the township of Plymouth, in said State of Maine, and in a separate grant of ten thousand acres of land known as the Eaton grant in said State.

Of these two tracts of land eight thousand four hundred and thirty acres were taken possession of and occupied by settlers during the time the jurisdiction of the United States was suspended by arrangement with Great Britain, in what is known as the disputed territory in said State, and the bill accompanying this report provides for the payment for this quantity of land to the parties who had title thereto according to their respective shares therein, at the rate of two dollars per acre for the land, and two dollars per acre for the timber which had been taken therefrom prior to the settlement of boundary by the treaty of the 9th of August, 1842. Said bill further provides for the payment to said parties in like manner for the timber taken from the balance of said land, being twenty-three thousand six hundred and ten acres, at one dollar per acre for said timber, the same having been taken therefrom during the suspension of the jurisdiction of the United States and of the State of Maine.

For a full description of the title to said land, and the proofs of the value of the same, and of the timber taken therefrom, reference is had to two reports of this committee, the one made at the third session of the thirty-fourth Congress, (Senate No. 323,) the other at the first session thirty-fifth Congress, (Senate report No. 168.)

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 63.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. PUGH submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Benjamin Ward, of the State of Maine, in favor of granting bounty land to the privateersmen of the United States, imprisoned at Dartmoor, during the war of 1812 *with Great Britain, has considered the same, and ask leave now to report:*

That concurring entirely with the opinion expressed by the Commissioner of Pensions, in his letter of February 2, 1860, herewith submitted, and referring to the report on the petition of Allen Gaylord and other citizens of Ohio, for bounty lands, at this session, it only remains for the committee to recommend that the prayer of the petitioner be not granted.

PENSION OFFICE, *February* 2, 1860.

SIR: I have the honor to return herewith the petition of Benjamin Ward, of Maine, praying, in behalf of "himself and the survivors of the American prisoners, who were imprisoned in Dartmoor prison during the war of 1812, such aid by an allowance of pension and land," as Congress may think proper to bestow, and to submit the following brief statement in reference thereto.

What number of prisoners were at Dartmoor during the war of 1812, or what classes of persons they composed, I have no means at hand of determining with accuracy. The number is, however, believed to have been not less than six thousand, and that they were mainly privateersmen and merchantmen.

For such, if any, as were of the United States navy, land is provided by existing laws, and pensions also if they were disabled. Privateersmen were also granted pensions for disability incurred in an engagement with the enemy, until the privateer pension fund became exhausted, and such as are now on the rolls are paid by the United States, but no new pensions of this class are now allowed. For "those persons" (of whatever description) "who were wounded at Dartmoor prison, in England, in the month of April, 1815," and "the widows and children of such as were killed or who died in consequence of wounds received there," pensions were provided by the act of April 2,

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1816, (Stat. 6, p. 160;) but no other provision, in the form of pension, and none in the nature of land, has yet been provided for.

Congress has heretofore refused otherwise to extend the benefits of the pension and bounty-land laws to privateersmen, and has never before, so far as I know, been asked to extend them to merchantmen. Were it to do so, the number of beneficiaries would be almost beyond limit. The mere fact of *imprisonment at Dartmoor* is, in my judgment, no more just ground of claim to pension or bounty-land than the imprisonment frequently suffered elsewhere by our gallant soldiers and seamen.

It may be proper to say that in computing the length of service for land or pension, the time spent as prisoners of war has always been taken into the account.

I am, sir, with great respect, your obedient servant,

GEORGE C. WHITING,
Commissioner.

Hon. GEORGE E. PUGH,
Senate of the United States.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. PUGH submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Edward D. Tippett, for bounty lands, has examined the same, and ask leave now to report:

That it sufficiently appears, from the statements of the petitioner, *ex parte*, that he served the United States less than fourteen days in a military capacity; and if it be true, as he alleges, that he was engaged in the battle of Bladensburg, he has only to prove the fact by competent testimony, and receive a warrant for one hundred and sixty acres of bounty land under the existing laws.

The committee asks to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. PUGH submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Abraham Edwards, late Register of the Land Office at Kalamazoo, Michigan, has fully considered the same, and now reports:

By a special act, approved March 2, 1849, Congress directed the officers of the treasury to audit and settle the accounts of the petitioner "upon principles of equity and justice," and appropriated whatever sum of money might be found due him from the United States upon such settlement. (Statutes at large, vol. 9, page 769.)

This act was passed in response to a petition of Mr. Edwards alledging that in consequence of the extraordinary number of purchases and entries at the Kalamazoo office, during the years 1835, 1836, and 1837, he was compelled to employ *three* more clerks than would otherwise have been requisite; and that he paid them $3,616 66 for their services.

After the act of March 2, 1849, Mr. Edwards presented an account for $5,302 36, paid to clerks in his office during the years 1835, 1836, 1837, and 1838, which was allowed in full by the Commissioner of the General Land Office; but, upon revision by the First Comptroller of the Treasury, (as that act required,) was reduced to $3,995 77, and promptly paid. The comptroller thus allowed $379 11 more than was claimed by the original petition; and, in doing so, allowed Mr. Edwards for the services of *ten* clerks, at one time or another, between the first of January, 1835, and the first of July, 1837, a period of two years and six months.

The claims rejected by the comptroller are for the services of two of these clerks after the 30th of June, 1837, namely:

S. York Atlee, from June 30, 1837, to April 4, 1839.....	$1,056 59
A. H. Edwards, from June 30, 1837, to December 31, 1837,	250 00
	1,306 59

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On the 24th of July, 1849, Mr. Edwards presented another account to the General Land Office; again charging the claims ($1,306 59) rejected by the comptroller, and an *additional* sum of $360, paid to Abraham Edwards, junior, as clerk, from the first of January, 1835, until the first of October, in the same year; which last mentioned claim is alledged to have been "overlooked" whilst preparing his first account. The Commissioner of the General Land Office allowed these claims, amounting to $1,666 59 in all; but upon revision by the First Comptroller, as required by the special act of March 2, 1849, they were entirely rejected. And these claims the petitioner now urges upon Congress as deserving favorable consideration.

The act "for changing the compensation of receivers and registers of the land offices," approved April 20, 1818. (Statutes at Large, volume 3, page 466,) proceeds on the idea that the commissions allowed to those officers—which commissions are proportioned to the business transacted at the several land offices, and are in addition to salaries prescribed in the same act—will suffice for the payment of such clerks as they may be compelled to employ, as well as for their own services. The salary is fixed at $500 for each year; but when a register has received, in addition, his *maximum* of commissions ($2,500) annually, it must be acknowledged that he cannot well complain of inadequate compensation. Such was the case of Mr. Edwards in 1835, 1836, and 1837; and yet, for the first two of those years and six months of the third, he received an additional allowance of $3,995 77 toward the expense of employing clerks. It seems to the committee that the government has been extremely liberal with him.

If the claim of $360 for the services of Abraham Edwards, junior, was not of sufficient importance to be recollected until fourteen years after the services had been performed—after the special act of March 2, 1849, and the final adjustment of accounts under it—the committee can see no reason for admitting that claim at present.

As to the claim of $1,306 59, for the services of S. Yorke Atlee and A. H. Edwards, subsequent to June 30, 1837, it was rejected by the First Comptroller, (Mr. McCulloh,) after a careful examination; and whatever may be the course with parties having a legal, or even an equitable right, as against the government, it would be a departure from all safe principles to set aside the final decision of a claim resting upon mere generosity, after the lapse of eleven years, and without even the suggestion of any additional fact or circumstance.

The committee recommend, therefore, that the prayer of the petitioner be not granted.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 66.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. PUGH submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Allen Gaylord and other citizens of the State of Ohio, in favor of granting bounty lands to the heirs of militia men killed in the Indian wars, and in the war of 1812, *with Great Britain, has considered the same, and ask leave now to report:*

The subject of granting bounty lands for military service is one which the committee has had frequent occasion to examine, and in regard to which the policy of the government ought by this time to have been clearly understood.

In the cases of certain revolutionary officers and soldiers, and of non-commissioned officers and soldiers in the war of 1812 and the Mexican war, lands were promised as part of the contract of enlistment or service; and, in such cases, the faith of the government having been pledged, this committee has constantly recommended the fulfillment of the promise so made. But, in other cases, where the government truly kept all its engagements with the officer or recruit, and where lands are asked as mere bounty for past services, the committee has felt itself constrained to adopt a definite and reasonable system. The principles of that system sufficiently appear in the act of March 3, 1855, (Statutes at Large, vol. 10, pp. 701, 702), and the supplementary act of May 14, 1856. (Statutes at Large, vol. 11, pp. 8, 9).

Often as the committee has reëxamined the subject, since those statutes, has it arrived at the conclusion, unanimously, that no extension of the system of bounty lands ought to be made. The particular request of the petitioners was the subject of a prolonged and able debate in the Senate, at the first session of the 34th Congress, and the result was its entire and absolute rejection by both Houses of that Congress, and by decisive majorities.

The committee does not care to enlarge upon the measure of gratitude due to the officers and soldiers who have defended the interests and the honor of the country against foreign nations or Indian tribes, but if such gratitude requires any further expression, by the government of the United States, a wise policy demands that appropriations of the public domain shall not be the form of expression or recognition.

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Already, the new States and the Territories are crippled by reason of the large tracts of unimproved lands within their respective limits, owned by non-residents; and this grievance inflicted on them, by the action of Congress, has now attained the utmost limit of toleration.

The committee adopts entirely the opinions of the Commissioner of Pensions, as expressed in his letter of February 1, 1860, herewith submitted, and recommends that the prayer of the petitioners be not granted.

PENSION OFFICE, *February* 1, 1860.

SIR: I have the honor to return herewith the petition of Allen Gaylord and others, which you left with me on yesterday, and in compliance with your request, to submit my views very briefly in reference thereto.

The prayer of the petitioners is for the enactment of a law granting bounty land to the *heirs-at-law* of deceased soldiers of the various Indian wars, since 1790, and that of 1812 with Great Britain. The existing legislation in this respect, being supposed to present an unjust distinction between those who served in the militia during said wars, and the soldiers who served in the war with Mexico.

It may be proper to state, in the first place, that it is an error to assume that the act of February 11, 1847, grants land "to the *heirs* of the soldiers who merely engaged to serve in the Mexican war." The law as to them, provides that in the event of the death of any such soldier "during *service*, or after his discharge," and before the issuing of the warrant, it shall enure, first, to his widow and children; second, to his father; third, to his mother; and fourth, to his brothers and sisters; but here it stops. The act of March 3, 1855, restricts the benefit of the gratuity granted to the soldiers of the war of 1812, and of the Indian wars since 1790 to the soldier, his widow, and such of his children as may have been under the age of twenty-one years at the time of its enactment. This constitutes the only difference between the acts referred to in respect to the recipients of their benefits. By reference to the provisions of these acts, it will be further seen, that to entitle any of the parties named in the act of 1847 to one hundred and sixty acres of land, the soldier must have served at least twelve months, a shorter period entitling him to only forty acres. On the other hand, a service of only fourteen days entitles the recipients of the gratuity provided by the government to one hundred and sixty acres, under the act of 1855. But a very marked distinction exists in the whole course of the legislation of Congress upon this subject, which so far from working injustice to the militia of our several wars, would seem strongly to savor of injustice to the soldiers of the Mexican war, and the enlisted soldiers of the war 1812. The act of 1847, and the several bounty-land laws passed immediately preceding and during the war of 1812, promised land in the nature of a *bounty* as in incentive to enlistment. The land thus promised, upon the fulfillment of the obligations of the soldier, became absolutely due, and as clearly earned as his pay, pro-

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vided for by other laws. The grants of land to the militia, after the service had been rendered and paid for, by the acts of 1850, '52, '55, and '56, were, on the other hand, *pure gratuities*. Yet the soldiers of the regular army who had received land in virtue of *obligations voluntarily entered into by the government, prior to their enlistment,* have been expressly excluded from the benefits of these late laws. In other words, neither the regular soldiers of the Mexican war and the war of 1812, nor their heirs, nor any class of their representatives, have to this day, received a single acre of land *as a gratuity* from the government, even for service throughout the entire war with England, while the soldiers of the militia, their widows and minor children have been allowed one hundred and sixty acres as a token of the nation's gratitude for the brief service, in many cases, of fourteen days only.

Without at all putting in question the propriety of the laws granting land to the soldiers who served in the militia in the several wars in which the country has been engaged, it seems clear to my mind that an extension of them cannot be justified by the suggestions contained in the memorial; and that, if other than existing legislation upon this matter be contemplated, it would seem that it should take a wider and different range from that asked for by the memorialists.

I am, sir, with much respect, your obedient servant,

GEO. C. WHITING,
Commissioner.

Hon. GEO. E. PUGH,
Senate of the United States.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Joseph Wilcomb, a soldier of the war of 1812, *praying an invalid pension, beg leave to report:*

That it appears from the rolls that he enlisted on the 9th of January, 1813, for one year, and was discharged January 14, 1814; and that on the muster rolls, November 30, 1813, he is reported "at Burlington, sick."

The testimony shows, that during his service the petitioner was ill of the measles, and also, that he had the camp disorder; and that when he entered the service he was of a robust constitution, and that he returned an invalid.

His first application for a pension was made in the year 1858, more than forty-four years after his discharge from the service. He produces no evidence from his superior officers that the disability under which he is now laboring, and to which the physicians certify, was contracted while in the line of his duty in the service of the United States.

The committee, therefore, recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 68.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Hugh Wiley, praying to be allowed a pension, beg leave to report:

That the petitioner states he was called into service in August, 1814, and discharged the month following; that while in service and in the line of his duty, he was thrown from his horse and "struck the hard road with the small of his back, and since that time, by spells, has suffered very much;" that he is now in the seventy-fifth year of his age, unable to do much work, and therefore prays assistance.

He has furnished no evidence of his service, or that he was disabled therein, or that he is now disabled. All that is furnished is his own statement.

Your committee, therefore, recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Daniel Abbott, praying to be allowed a pension, having had the same under consideration, beg leave to report:

That the petitioner sets forth that he enlisted into the service of the United States, as private in the 31st infantry, in the spring of 1814, for during the war, and was honorably discharged on the 6th of June, 1815; that in the month of July he was detached to act as waiter to Lieutenant Moore, of a rifle corps, and while in the line of his duty as such waiter he was ordered to water the horses of his officer; that he rode one and led the other; that the horses took fright, by which he was thrown and received a cut over his left eyebrow, which resulted in the loss of his eyesight; that the other eye has also been affected.

The rolls at the office of the Third Auditor show that the petitioner enlisted and was discharged as stated by him; but they afford no evidence that he was disabled while in service, or that he was detached as waiter to Lieutenant Moore.

In such cases the rule of the department is that parol testimony cannot be admitted to disprove the record of the rolls. The testimony furnished on this point is not satisfactory, could it be received.

Your committee therefore recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

February 20, 1860.—Ordered to be printed

Mr. Harlan submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of Thomas Jones and others, of Clermont county, Ohio, asking for bounty lands, have reëxamined the same, and ask leave now to report:

That concurring with the opinion expressed by the Commissioner of Pensions, in his letter of May 4, 1858, herewith submitted, and referring to the report on the petition of Allen Gaylord and other citizens of Ohio, for bounty lands, at this session, it only remains for the committee to recommend that the prayer of the petitioners be not granted.

Pension Office, *May* 4, 1858.

Sir: In reply to your note of the 30th ultimo, covering the inclosed memorial, and containing a request that I would advise the committee "what (if any) evidence exists" in this office "relating to the matters set forth in said petition." I have the honor to say, that the only testimony adduced, is that filed in the claim of John Buchanan, No. 179,000, and which is to the effect of the facts stated in the petition by the parties themselves; and which, for that reason, being mutually interested, this office does not consider admissible.

It is shown, by the statement made in the memorial, that Captain Thomas Jones's company, though organized in Clermont county, Ohio, and marched to Fort Wayne, was never received into the United States service; consequently it does not come within the provisions of the first section of the act of March 3, 1855, which requires, that in order to obtain land, all State troops must be mustered into the service of, and paid by, the United States. Neither is there any evidence adduced to show that the petitioners served "with the armed forces of the United States" as "volunteers," subject to military orders, for the space of fourteen days, (according to the fifth section of the amendment to said act, approved May 14, 1856,) whether they were mustered into service or not. Competent evidence showing this fact would supersede the necessity of any legislative action in the premises.

Very respectfully, your obedient servant,

GEO. C. WHITING,
Commissioner.

Hon. Charles E. Stuart,
Chairman Committee Public Lands, U. S. Senate.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 71.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1860.—Ordered to be printed.

Mr. SAULSBURY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Elias Carpenter, beg leave to report:

That it appears from the proper records of the Pension Bureau, that on the 29th July, 1831, the petitioner was allowed a pension, under the general laws, at the rate of eight dollars per month for total disability, commencing July 23, 1831, the time of the completion of his testimony.

He now prays that arrears may be allowed him from the year 1813, the date of his disability, to July, 1831, when his present pension commenced.

The general law of February, 1822, the regulations of the department, and the practice of former committees, are opposed to this prayer, and have declared that invalid pensions shall commence only from the completion of the testimony. The committee, therefore, recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 72.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1860.—Ordered to be printed.

Mr. TEN EYCK made the following

REPORT.

[To accompany Bill S. 195.]

The Committee on Revolutionary Claims, to whom was referred the memorial of the legal representatives of James Bell, late of Chambly, in the Province of Lower Canada, deceased, beg leave to report.

That on the 30th of June, 1834, an act of Congress was passed for the relief of the heirs of James Bell, directing the accounting officers of the treasury to settle the several accounts of James Bell, late of Chambly, in the British Province of Lower Canada, on equitable principles, for moneys advanced, services rendered, and for stores, materials, and supplies furnished, &c., with a proviso, however, that the sum to be allowed said heirs should not exceed $5,727 03. That, in pursuance of this act, the accounts were settled by the accounting officers of the treasury, and a balance stated to be due from the United States of $27,147 54, which was made up of $6,056 34 principal, and $21,091 20 interest. That there was thus left due to the heirs aforesaid a balance of $329 31 principal, and $21,091 20 interest, as appears by a certified copy of the account referred to and submitted to the committee.

That of the amount thus stated to be due, the United States have paid a part only of the principal, viz: $5,727 03, and none of the interest.

A balance of three hundred and twenty-nine dollars and thirty-one cents of the principal is therefore unquestionably still due, and, in the opinion of your committee, ought to be paid. The claim of the memorialist, as far as regards this balance, is strictly just, and your committee recommend the passage of an act authorizing the payment of the said sum of three hundred and twenty-nine dollars and thirty-one cents, together with interest thereon from the thirtieth day of June, A. D. one thousand eight hundred and thirty four, until the same be paid, and they report a bill accordingly.

The committee have also examined a report heretofore made on the same subject, April 9, 1856, by Mr. Durkee, of the Senate, which report they believe to be correct in argument and just in conclusion, as far as regards the payment of the balance of three hundred and twenty-nine dollars and thirty-one cents of principal, with interest thereon, and therefore adopt it as their own, to that extent.

It is as follows:

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IN THE SENATE OF THE UNITED STATES, *April* 9, 1856.

The Committee on Revolutionary Claims, to whom was referred the memorial of the legal representatives of James Bell, late of Chambly, in the Province of Lower Canada, deceased, beg leave to report:

That they have examined with great diligence and care the claim presented by the memorialists in their petition and accompanying documents, and find that it is just and sustained by satisfactory proof. This claim was brought to the attention of Congress as early as 1794, when a report in its favor was submitted to Congress by the committee to whom it was referred. Subsequently, a favorable report was made to Congress on this case by Albert Gallatin, then Secretary of the Treasury. From this period until the death of Mr. Bell, in 1814, the claim was constantly prosecuted; but after his death it was neglected by his children, until they learned that the statute of limitation enacted by Congress was no longer rigidly enforced, when they again brought it forward in the shape of a memorial to Congress. Few cases brought to the attention of the committee have commended themselves to their sense of justice more strongly than this. On the faith of a proclamation issued by Washington himself, and addressed to the people of Canada at the time of its invasion by General Montgomery, Mr. Bell not only furnished the troops with supplies of arms, provisions, clothing, munitions of war, timber, and cordage for the construction of a flotilla, but joined the army in person, and led the assault on Fort Chambly, at the head of a company of volunteers, raised and equipped at his own expense. The fort was captured, and Mr. Bell was wounded; but his enthusiasm in the cause of liberty did not abate. His ample means were all at the disposal of the American army, and were contributed freely to ensure the success of the expedition under the orders of Montgomery. After the fall of that gallant leader under the walls of Quebec, and the retreat of the army, Mr. Bell was taken prisoner, and would have been executed as a traitor but for the influence of certain powerful friends in Scotland, which was successfully exerted with the British general in his behalf. Through their instrumentality he was released; but his fortune was gone, and the remainder of his life was passed in seeking the payment of his claim against the government. In 1814 he died in poverty, leaving his claim as a legacy to his children, who have been pursuing it for the last quarter of a century.

In 1834 an act was passed by Congress for the relief of Mr. Bell's heirs. This act directed the accounting officers of the treasury to settle the several accounts of James Bell on equitable principles, for moneys advanced, services rendered, and for stores, materials, and supplies furnished, &c., with a proviso, however, inserted by the Senate, that the sum allowed should not exceed $5,727 03. In pursuance of this act the account was settled, and found to amount to $27,147 54; which was made up of $6,056 34 principal, and $21,091 20 interest, There was thus left due to the heirs a balance of $329 31 principal, and $21,091 20 interest.

That the claim was one on which interest was legitimately due, a

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reference to its character very clearly makes manifest. In almost all cases of like character interest has been paid by Congress. But should principal and interest both be paid, the committee doubt very much whether the memorialists will even then receive a sum equal to that which their ancestor expended in the first place. Your committee, however, do not feel authorized, in the computation of interest, to go further back than 1794, (eighteen years after the supplies were furnished and services rendered,) from the fact that they have no evidence before them that the claim was ever presented for payment until that time. This will reduce the interest as above stated about one third. In the course of Mr. Bell's long imprisonment, and the compulsion he was under to keep his vouchers out of the sight of the enemy, by whom they would have been used as evidence against him, many of them, according to the proof before the committee, were lost or destroyed. It is, therefore, believed that a large portion of the original claim remains unsubstantiated in consequence of the loss and destruction of the vouchers. For this reason, amongst others, the committee are of opinion that the $329 31, with interest thereon from the time of the former settlement, together with the balance of interest then remaining unpaid, are justly due the memorialists. They therefore report a bill in conformity with this view of the case, and annex to their report the reports of several committees, both of the Senate and House.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 73.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1860.—Ordered to be printed.

MR. DURKEE made the following

REPORT.

[To accompany bill S. 196.]

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Charles Porterfield, deceased, having had the same under consideration, beg leave to submit the following report:

The parties claimant are the legal representatives of Charles Porterfield, who was one of the early patriots of the revolution, and a member of that famous band of soldiers, who marched on foot, as volunteers, in the space of three weeks, a distance of six hundred miles, from the county of Jefferson, in the State of Virginia, to the relief of the city of Boston, in the summer of 1775.

As a sergeant in Daniel Morgan's company of Arnold's detachment against Quebec, he was the first man who mounted its walls, and there being taken prisoner of war, he remained as such from December, 1775, till the following September. Immediately upon being exchanged he returned home, and obtained a captain's commission in the eleventh Virginia regiment, on continental establishment, and with a command of seventy men marched, in the spring of 1777, to join the American army, then in New Jersey. He brought on the action of Brandywine, was engaged in the battles of Germantown and Monmouth, and continued in active service until the winter of 1778–79.

He then returned again to Virginia, and was appointed commander of one of her regiments, and afterwards quartermaster general of the State. But upon hearing of the siege of Charleston, he applied to Governor Jefferson for permission to go to its relief, and overcame the objection that his men were not bound to march beyond the limits of the State, by inducing them voluntarily to unite their destiny with his, upon promising that he would apply his private fortune to their support. With the proceeds of the sale, as is alleged, of his large real and personal estate he left home, and, as history states, was within a few days' march of Charleston when it surrendered. He then sought to join the forces under Colonel Buford, and was within one days' march of him when that officer was surprised, and his regiment cut to

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pieces. At his own expense he sustained his men until the ensuing August on the frontiers of South Carolina, when he placed his corps, on the day before the battle of Camden, under General Gates. In that battle he led the advance, and fell mortally wounded. About two-thirds of his men were killed, and, as your committee are informed, all of his effects—money and papers—fell into the hands of the enemy. At the request of his brother, Robert Porterfield, also a soldier, the means for his burial were generously loaned by Lord Rawdon.

As an inducement to such acts as these, at a very early period of the revolution the State of Virginia contracted to give to all who should engage in the service upon the continental or State establishment a liberal bounty in lands; and at every session of the legislature during the war these assurances were renewed. Various acts passed, setting apart certain districts or tracts of country for this purpose, and among other acts was one, passed in November, 1781, appropriating to that object "all that tract of land included within the rivers Mississippi, Ohio, and Tennessee and the Carolina boundary line," and which the legislature supposed they had, by their act of 1779, (establishing a land office, &c.,) exempted from the location of land office treasury warrants.

As heir-at-law of Colonel Charles Porterfield, a warrant was issued to his brother, Robert Porterfield, for six thousand acres in 1782, and as assignee of Thomas Quarles, a warrant was issued to him for 2,666⅔ acres, in 1783. In pursuance of these warrants, and under the authority of laws subsequently passed, the said Robert Porterfield, in August, 1784, made within the district above described five entries, amounting in all to 6,133⅓ acres; but the country was in the possession of the Indians, who were so much dissatisfied with the inroads into the country and the location of so large an amount of these warrants that an Indian war was apprehended. The governor of Virginia, on the 6th of January, 1785, under the direction of the legislature, issued a proclamation prohibiting those who had made entries of land within the said territory from proceeding further in taking possession of or surveying the land, and commanding the commissioners, surveyors, and all other persons to withdraw from the said lands. In consequence of this proclamation the said Robert Porterfield was prevented from perfecting his entry by survey and patent. This proclamation continued in force until the United States, by treaties made in 1794 and 1795 with the Cherokee and Chickasaw Indians, guarantied to them as a hunting ground the country lying to the south of the Tennessee river, and all persons were prohibited from entering on or taking possession of the said territory.

The country remained in this situation until 1819, when the obstruction of the Indian title was removed by treaty, yet Kentucky having, in the meantime, become a State, by various acts of her legislature retarded the right of the military claimants, and it was not until 1824 that the said Porterfield procured his entries to be perfected by survey, and a patent to be issued to him from the governor of Kentucky in pursuance of certain stipulations had between Virginia and Kentucky, when the latter became a State.

After having thus perfected his title, the said Robert Porterfield took possession of his land, and by an agent granted leases to several

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persons, whom he found living on it, &c.; but these tenants were subsequently evicted and turned out of possession under writs of forcible entry, and detaining by persons claiming title to the same land, under a grant of an older date to George R. Clark.

To the understanding of this, it is necessary to state some facts.

In May, 1779, the legislature of Virginia passed an act establishing a land office for ascertaining the terms and manner of granting waste and unappropriated lands. Under this act, any person might procure from the treasury, on paying a certain price, a warrant to locate and obtain a patent for any waste or unappropriate land, with a proviso that no entry or location should be admitted within the country and limits of the Cherokee Indians, or on the north side of the Ohio river, or on lands reserved for any particular nation or tribe of Indians, &c. The warrants under this act were called treasury warrants. Under certain warrants of this character, the said George R. Clark made entries of two tracts of land—one for 36,962 acres, and another for 37,000 acres—within the district of country which the legislature of Virginia had set apart for military land warrants by the act of November, 1781. These entries were made in 1780 and 1781, prior to the passage of the act of November, 1781. The phraseology of which last-mentioned act, together with others, goes to show that the legislature of Virginia was ignorant of the fact that any part of these lands had been or were subject to the location of treasury warrants; the board of superintending offices were equally ignorant of this, as was Porterfield. Whereupon, he being then of an advanced age, and incompetent to the labor and exertion required for contesting the matter, presented a petition to the twenty-fourth Congress, asking indemnity for his 6,133⅓ acres of land involved in Clark's location; but he was advised, as your committee are informed, by the late B. Watkins Leigh, then a senator in Congress, that such would likely be refused until it should be decided by the courts that Clark's title was paramount, especially as the property had then become of great magnitude, the town of Paducah having been built upon it; and the said Leigh expressed the opinion, as did other eminent lawyers, that the entry of Clark was void being within "the country and limits of the Cherokee Indians," which were excepted from entry by the act of May, 1778. Under this advice a bill was filed in the circuit court of the United States for the Kentucky district, on the 18th July, 1836, against Meriwether L. Clark and others, who claimed under the grants to George R. Clark.

In the prosecution of this suit much time and money were expended. Many witnesses were examined, and a large amount of testimony, as to the right of the Indians to this tract of country, was procured from the colonial office in England. After various continuances, the case was finally brought to a hearing, on the 13th of November, 1841, when the bill was dismissed with costs. An appeal was taken to the Supreme Court, where the appeal was dismissed.

Under these circumstances, your committee are of opinion that as the Virginia grant of the land was in pursuance of a contract made with her officers, she would be bound to reimburse to her grantee the land which he lost by the uncertainty of her own laws; and, that as she has given to the United States an immense extent of territory, and

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by this cession has not now the means of complying with the contract, the United States ought to do what Virginia would now do if she had the power; especially, as they have on various occasions recognized their liability for the debts incurred by the several States in the war of the revolution, and as there is still remaining a large part of the 2,500,000 acres set apart for the satisfaction of Virginia military land warrants, by the act approved August 31, 1852.

And in further consideration of the large expenditures made in the life time of the gallant young soldier, of which no account can now be rendered, and of which nothing has been paid, and of the heavy costs entailed upon his representatives in seeking the inheritance won by his services, suffering, and death, your committee are constrained to report a bill, herewith, granting them from the unappropriated public domain the number of acres of which they were divested, in the manner in said bill prescribed.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 74.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1860.—Ordered to be printed.

Mr. BRAGG submitted the following

REPORT.

The Committee on Claims, to whom was referred the memorial of John H. Wickizer, have had the same under consideration, and submit the following report:

The memorialist states that he was induced by J. Neely Johnson, marshal of the State of California, in the year 1850, to act as assistant, and take the census in the counties of Santa Cruz and Monterey, upon a promise that his reasonable expenses and a fair compensation for so doing should be allowed him by the United States; that he was two and a half months engaged in taking the census; that his actual expenses were four hundred and ninety-eight dollars, and that he had received as pay only three hundred and sixty-three dollars, which he is informed is full pay under the act of Congress for taking the census in California.

The committee deemed it advisable to apply to the Department of the Interior for information, and received the accompanying letter from the Secretary, which they submit as a part of this report.

It appears therefrom that the memorialist received all the pay he was entitled to under the law, being double the rate of pay in the older States. If any such promise was made to him by the United States marshal, as that stated by him, it was made without authority of law, and it was the folly of the memorialist to rely upon the same. The committee are of opinion, however, that he has been fully compensated for his services—the letter of the Secretary of the Interior showing that he was engaged only sixteen days in making the enumeration. They recommend that the prayer of the memorialist be denied, and that the accompanying resolution be adopted by the Senate.

Resolved, That the claim of John H. Wickizer, for extra compensation for taking the census under the act of Congress, 1850, in the counties of Monterey and Santa Cruz, in the State of California, be and the same is hereby rejected.

DEPARTMENT OF THE INTERIOR,
Washington, February 14, 1860.

SIR: In response to your communication of yesterday, accompanied by the petition of John H. Wickizer, an assistant employed in taking

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the seventh census in the counties of Santa Cruz and Monterey, California, I would state that under the twelfth and thirteenth sections of the law of May 23, 1850, and the third section of the law of August 30, 1850, this petitioner was, for his services, entitled to the sum of $186 50. Under the provision of the first section of the law last recited, leaving discretionary with the Secretary of this department the increase of the compensation of the assistants in California, &c., so as to cause the prompt and faithful execution of the work, this petitioner was allowed and paid the further sum of $186 50, whereby his pay was precisely double what it would have been had he performed a like amount of service in the older States.

The better to enable you to determine the sufficiency of the compensation allowed to this petitioner, I will state further, that while by a letter of his, on file in this department, under date of April 12, 1852, he claims for *sixty* days service, including time devoted to copying his returns, and in his petition claims two and a half months, *the entries on his returns*, whereon he was required by law to enter each and every day's service, indicate that he was engaged only *sixteen days in the work of enumeration.*

It further appears that he received the sum of $373 in place of $363, as stated in his petition.

With an understanding of these facts, the committee will be able to determine whether the petitioner is entitled to additional compensation.

The memorial of this petitioner is herewith returned.

I have the honor to be, with great respect, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. THOMAS BRAGG,
Senate of the United States.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 75.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1860.—Ordered to be printed.

Mr. HEMPHILL submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of Wm. L. S. Dearing, praying remuneration for expenses incurred in raising a company of volunteers for service in Florida, report:

That they concur in the report made by this committee to the Senate on the 28th of April, 1858, adverse to the claim of the petitioner. Moreover, that said report was agreed to by the Senate on the 16th of December, 1858, and although a new petition has been presented, no new evidence has been offered.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1860.—Ordered to be printed.

Mr. WILKINSON submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of the legal representatives of George Mayo, deceased, praying compensation for services performed by said Mayo as an extra clerk in the General Post Office Department, beg leave to report:

The petitioner alleges that about the 1st of September, 1831, George Mayo, at the suggestion of his brother, the petitioner, who was at that time a clerk in the Post Office Department, went to work to assist him upon the duties of his desk, the said George Mayo being at that time an applicant for a clerkship in that department. He was thus employed for one month, when, it is alleged, he was transferred by one of the Assistant Postmasters General to other duty, which he performed until the 1st of March following, when he voluntarily left the department. At a subsequent period he received an appointment in the department, which he had during all this time been expecting, at a salary of eight hundred dollars per annum, but did not hold the same only about a year before he was taken sick and died.

No evidence appears that he preferred a claim against the department during his life, for the services rendered prior to his appointment.

The first claim that appears to have been made was by the petitioner, in the year 1843, about eleven years after the service was performed; which claim, upon being presented to the then Postmaster General, Mr. Wickliffe, was rejected, upon the ground that the records furnished no evidence of an agreement to pay, and that, in the opinion of Mr. Wickliffe, as the said Mayo remained without being paid, or claiming pay, though the clerks, regular and extra, were paid off at the end of each month, he occupied a position in the office often sought by young men, to do duty without charge, in order to be in a favorable position for the first vacancy; which opinion was subsequently concurred in by Postmaster General Johnson, in 1846.

It does not, therefore, appear that the employment of the said George Mayo in the department prior to his appointment was authorized by the Postmaster General, the only officer competent under the law to employ extra clerks in his department; and this fact, taken in connection with the fact that no demand was made upon the department during the said Mayo's life, and not until nearly eleven years afterwards, justifies the inference that the department entertained the

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proper view of the case, and in which view your committee are inclined to concur.

They feel that the equity of the case is not sufficiently strong to justify them in recommending the payment of the compensation prayed for, establishing thereby a precedent which might lead to much laxity and abuse. They think it best to adhere strictly to the rule that no clerks or officers shall be added to the public service by the executive departments beyond what is authorized by law and provided for by appropriation, and therefore they recommend the adoption of the accompanying resolution:

Resolved, That the prayer of the representative of George Mayo, deceased, ought not to be granted.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 77.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1860.—Ordered to be printed.

Mr. BRAGG submitted following

REPORT.

The Committee on Claims, to whom was referred the memorial of Charles M. Perry, have had the same under consideration, and submit the following report:

The memorialist states that he was appointed a messenger in the office of the Treasurer of the United States on the 28th of September, 1853, at a salary of $700 per annum, afterwards increased to $840, to take effect from the date of his appointment; that from the date of his appointment to the 1st day of January, 1857, he performed no duties as messenger, but that he was employed in the office as a copying clerk, and for which he claims pay as a first class clerk, and that, deducting the pay he received as messenger, there would remain the sum of $1,172 94, for payment of which he asks that Congress may make provision.

A number of letters from officers in the treasury office are filed with the memorial to substantiate the claim; among others, one from Wm. B. Randolph, chief clerk, bearing date the 29th November, 1855, in which he states: "You know that for some time before your appointment, and subsequently, the proper duties of messenger were and have been performed by two persons employed as laborers, the former messenger having, since 1846, been engaged in the money-room exclusively, and you were not required to take his position in that room."

No explanation or reason is given for this arrangement.

A copy of a letter from Samuel Casey, Treasurer of the United States, to the Hon. James Guthrie, Secretary of the Treasury, is also filed, asking that Mr. Perry may be allowed such sum out of the contingent fund of the department as in justice ought to be paid to him. It states, among other things, that "as Mr. Perry had no practice in the duties of messenger, and was willing to do any duty in the office he could, he was employed in making out and transcribing the books of the accounts in the office."

What Mr. Guthrie's reply was to this application does not appear; his answer to Mr. Casey's letter, if any was given, not being filed. The committee, however, take it for granted that he refused the application.

An examination of the official register shows that Mr. Perry now holds a second class clerkship in the Treasurer's office; and although

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the committee are uninformed as to the date of his promotion, they suppose it was when he states that he ceased to discharge the duties for which he now asks compensation.

Upon the whole, the committee are satisfied that the arrangement as to Mr. Perry's taking the place of messenger, the duties of which were discharged by others, was made with his consent and for his benefit, and, so far as appears, without the sanction of the head of the department—without whose consent, and that only during a session of Congress, unless when indispensably necessary to answer some call made by either house of Congress at one session, to be answered at another, no extra clerk could legally be appointed in any department, bureau, or office. (See vol. 5, Stat. at Large, p. 525, § 15.)

That act, together with others of like character, was passed by Congress to prevent abuses. The policy which prompted such legislation ought not, in the opinion of the committee, to be disregarded, unless for very strong reasons. In their opinion, this case furnishes no such reasons. They therefore report the accompanying resolution, denying the prayer of the memorialist, and recommend its adoption by the Senate.

Resolved, That the claim of Charles M. Perry for $1,172 94, for clerical duties alleged to have been performed by him in the office of Treasurer of the United States, from the 28th September, 1853, to the 1st January, 1857, while holding the place of messenger therein, be, and the same is hereby, rejected.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 78.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1860.—Ordered to be printed.

Mr. THOMSON made the following

REPORT.

[To accompany Joint Resolution S. 15.]

The Committee on Naval Affairs, to whom was referred the petition of John C. Carter, a lieutenant in the navy, having had the same under consideration, beg leave to report:

That by joint resolution approved February 13, 1855, it was resolved "That in the settlement of his accounts, Lieutenant John C. Carter shall be allowed such expenses as were incurred by him whilst acting as purser on board the ship Massachusetts, undergoing repairs at San Francisco, California: *Provided*, The amount shall not exceed the sum of one thousand eight hundred and sixty-nine dollars and five cents," ($1,869 05.) That in the settlement of his accounts, the accounting officers of the treasury allowed to Lieutenant Carter only the expenses incurred by him whilst the Massachusetts was actually undergoing repairs, viz: $913 69—leaving a balance of $955 36 of the amount specified in the resolution unpaid, which latter amount was incurred for extraordinary expenses growing out of his acting pursership of the Massachusetts, and was intended by the committee reporting the resolution to be covered by the amount therein named—vouchers for that exact sum having been presented to, and examined by, that committee, and for which, in their opinion, Lieutenant Carter was entitled to relief, and which only failed to be so expressed in the resolution by the accidental omission of a word in the hurry of its preparation. (See statement of the then chairman of the Senate Naval Committee, Cong. Globe, first sess. thirty-fifth Cong., pp. 2259 and 2260.)

Your committee therefore report the accompanying joint resolution, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 79.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1860.—Ordered to be printed.

Mr. PUGH made the following

REPORT.

[To accompany Bill S. 199.]

The Committee on Public Lands, to whom was referred the petition of Henry Hobbs, of the State of Maine, for an extension of the act "to provide for satisfying claims for bounty lands for military services in the late war with Great Britain, and for other purposes," approved July 27, 1842, has examined the subject, and ask leave now to report:

The act of July 27, 1842, by its first section, authorized the location of all bounty-land warrants for military service in the war of 1812 with Great Britain, which remained unsatisfied at that date, within the period of five years thereafter. The second section extended for a like period the authority to issue and to locate bounty-land warrants, under two acts approved January 27, 1835, (Statutes at Large, vol. 4, page 749,) one with regard to officers and soldiers in the war of 1812, and one with regard to officers and soldiers in the revolutionary war. The act of 1842 declared, nevertheless, "that all cases which shall not, within the time aforesaid, be finally disposed of, shall be thereafter forever barred from the benefits of all claim to bounty land for services performed within the spirit and meaning of said acts." (Statutes at Large, vol. 5, page 497.)

The two acts of January 27, 1835, ceased to be effectual, by limitation, on the 26th of May, 1839, and the 1st of January, 1840, respectively, and were themselves acts to revive and continue in force, for the third or fourth time, certain acts which had then expired.

The act of 1842 expired on the 27th of July, 1847, by limitation; but was revived by the act of June 26, 1848, and continued in force during a term of five years from the date last named. (Statutes at Large, vol. 9, page 240.)

This act of 1848 expired on the 26th of June, 1853, but was revived for a term of five years from that date, by the act of February 8, 1854. (Statutes at Large, vol. 10, page 267.)

The Commissioner of the General Land Office recommends that the act of 1842 be revived and continued in force indefinitely; but the reasons assigned for this recommendation are not of a satisfactory character. The claims for bounty lands under that act are now very

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ancient; they have been lost, by mere neglect, five or six times, and and after full and repeated notice as to the consequences of such neglect. It may be convenient to the General Land Office, and in some few cases, perhaps, would be equitable to enlarge the period for locating warrants heretofore issued; and the committee is willing to continue the act of 1842 in force, to that extent, for three years. But the fact that such warrants may be claimed by the heirs-at-law (ever so remote in degree) of deceased officers and soldiers—and not merely, as under the general acts of March 3, 1855, and May 14, 1856, by the officers and soldiers themselves, or their widows or minor children—affords a sufficient reason why claims, which are destitute of merit, as to most of those who would now assert them, should not be relieved from the usual consequences of so great a lapse of time.

The committee reports a bill in accordance with these suggestions.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1860.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 201.]

The Committee on the District of Columbia, to whom was referred the several petitions and memorials in relation to a railway on Pennsylvania avenue, from the navy-yard to Georgetown, having had the same under consideration, ask leave to report the accompanying bill. They also present as a part of this report an estimate of the costs and expenses of constructing and working the railway.

Cost of equipment and construction.

Cost of real estate in Georgetown and Navy Yard.....	$50,000 00
41 cars, (to run every two and a half minutes,) $900 00 each.....	36,900 00
287 horses, being 7 to each car.....	35,875 00
Distance from Navy Yard to Georgetown, four and a half miles, making nine miles of double track, at $10,500 per mile.....	94,500 00
Two sets of double harness for each car, $30.....	1,200 30
Distance from Pennsylvania avenue, along Seventh street, to M street, four fifths of a mile, making one mile and three fifths, at $10,500 per mile, double track,	16,800 00
Miscellaneous expenditures, not enumerated.....	20,000 00
Total cost of equipment, &c.....	$258,275 30

Expenses for working the road, per annum.

44 drivers, at $8 per week	16,400 00
6 timers, at $500 per annum.....	3,000 00
44 conductors, at $600 per annum.....	26,400 00
10 smiths, $475 per annum.....	4,750 00
2 stable foremen.....	1,050 00

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22 ostlers		6,176 00
2 clerks		1,800 00
1 general manager		2,500 00
4 feed-men		1,248 00
Car oil		150 00
Lamp lighter		300 00
Office expenses, stationery, fuel, &c		500 00
Sundries, not enumerated		5,000 00
Taxes, insurance, and repairs on real estate		1,000 00
Estimating that in ten years the horses will have died, and the total destruction of the track, cars, and harness, one tenth per annum		20,527 53
Total expenses for working the road, per annum		$90,801 53
Average receipts of omnibuses, each, per day, $7 50, making, for forty-one omnibusses, per annum		95,940 00
Add 50 per cent. increase of the travel of the cars over the omnibusses, per annum		47,970 00
		$143,910 00
Total receipts of the road, per annum		$143,910 00
Total expenses of the road		90,801 53
		$53,109 47
Horse feed for 287 horses, per annum	19,000 00	
Six per cent. interest on construction and equipment	15,496 51	
		34,496 51
Net earnings		$18,612 96

Out of which is to be paid the sum stipulated to the support of the public schools in Washington and Georgetown.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 81.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1860.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany Bill S. 221.]

The Committee on Post Offices and Post Roads, to whom was referred the petition of A. T. Spencer and G. S. Hubbard, of Chicago, Illinois, praying compensation for services performed in carrying the mails on their line of steamers between Chicago and the ports on Lake Superior, have had the same under consideration, and beg leave to report:

The memorialists represent that they transported, at the request of the postmasters and agents of the Post Office Department, the United States mails, in steamboats, between the city of Chicago, Illinois, and the several ports on Lake Superior, from the year 1854, to the present time, during the season of navigation, for which they have not been compensated, and they now pray that Congress will allow them a fair and equitable remuneration for the said service.

They further represent that this service was performed in contemplation of an allowance to be made to them equal to that awarded by the government for service of a similar character, and the distinct assurance of the agents of the Post Office Department was given to them that they would be adequately compensated therefor.

The evidence before the committee of the faithful and efficient character of the service rendered by the memorialists is clear and satisfactory; and that it was undertaken and performed at the request of the government officials having charge of the mails.

Most satisfactory proof of the performance of the service is to be found in the testimony of Captains J. E. Turner, John Wilson, and B. G. Sweet, confirmed by the affidavits of the postmasters at Chicago, Milwaukie, Mackinac, Marquette, Eagle River, Ontonagon, and La Pointe. This evidence, coming from men of character and experience, entirely conversant with all the facts connected with the transportation of the mails on the route, is such as the committee are disposed to place the fullest reliance in as substantiating the facts alleged by the memorialists.

The evidence being somewhat voluminous, the committee will not burden the Senate with its full publication, but will solicit its attention to the explicit affidavit of Captain J. E. Turner, appended to this report, marked exhibit E.

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The witnesses generally concur in the statement set forth in the petition that the service was performed by the memorialists at times under circumstances of great hazard to life and property; and it is the unanimous opinion of the committee that they should receive compensation proportionate to the service rendered and the danger incurred.

The committee are satisfied that the steamers belonging to the line owned by the memorialists, afford the most expeditious and reliable means for the transportation of the mails between the city of Chicago and the several ports on Lake Superior; and moreover, that it was through their agency that the inhabitants of a remotely located country were furnished with their semi-monthly mails from that point, during the season of navigation, since the year 1854.

From all the evidence in the case, and from the statements of reliable persons having a personal knowledge of the facts, the committee are confident that the service for which compensation is sought was actually and faithfully performed; that the interest of a large and active business community engaged in the development of an important source of national wealth, required the performance of the service rendered by the memorialists, and for which they have received no compensation.

In view of the facts in the case, the committee believe that a bill should be passed instructing the Postmaster General to settle the claim of the memorialists, upon the principle of a compensation equal to that paid for like service of the United States; and they report a bill accordingly, and recommend its passage.

E.

DISTRICT OF COLUMBIA, *County of Washington:*

Before the undersigned, C. W. C. Dunnington, a justice of the peace in and for the county and district aforesaid, personally appeared Captain John E. Turner, captain of the steamers Northerner and Iron City, running between Detroit and Lake Superior, who, being duly sworn, deposeth and saith, that he is well acquainted with the trade on Lake Superior connected with steamboating, having been formerly, viz: in the year 1855, commander of the steamer Northerner, and since then to the present time commander of the steamer Iron City; that he knows well the steamers Superior and Lady Elgin; that he is cognizant of the fact, that during the years 1854, 1855, and 1856 the former, and during the years 1856, 1857, 1858, and 1859 the latter, did carry, during the period of navigation, the United States mail between Chicago and the ports on Lake Superior; that service was performed at the request of the agents of the Post Office Department of the United States; that it was done at great risk and expense to the steamers aforesaid; that the bulk of it was sometimes large, and equal to that stated in the memorial of the owner of the said steamer directed to the Senate and the House of Representatives of the United States, which he has carefully read; and to the truth of the allegations made in said memo-

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rial he hereby makes oath, having carefully read the same, and compared them to the facts to him personally known; the said memorial being the one marked No. 1, and certified to, by the undersigned justice of the peace aforesaid, as the one read to this deponent before making this affidavit.

J. E. TURNER.

Sworn to and subscribed before me, this 14th day of February, 1860.

C. W. C. DUNNINGTON,
Justice of the Peace.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1860.—Ordered to be printed.

Mr. THOMSON made the following

REPORT.

[To accompany Bill S. 222.]

The Committee on Pensions, to whom was referred the petition of Mary Featherston, widow of John Featherston, late a boatswain in the United States navy, praying to be allowed a pension, beg leave to report:

That it appears the husband of the petitioner was appointed boatswain in December, 1841, and died on the 30th October, 1852, at the navy-yard, Pensacola, Florida.

The records show that said Featherston died while in the line of his duty, at the navy-yard, as above stated, having been admitted on the sick list with fever on the 4th August preceding, and that his disease terminated in ascites, or dropsy in the belly, which ended in death.

Surgeon Hulse, of the United States navy, who was stationed there at the time, says Featherston was constantly attending to his duties in the navy-yard up to the date of his admission on the sick list, when he was attacked with fever, and that he has, no doubt, that several of the large viscera were, at the time of his admission, affected with a chronic disease, contracted under exposures, which it is now impossible to recognize or trace to their origin. The prominent feature eventually was dropsy, and all know that this disease is the result of complications in the great organs.

Your committee, after a full examination of the case, are of the opinion that the petitioner is entitled to relief, and report a bill accordingly, and recommend its passage.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 83.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1860.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 223.]

The Committee on Claims, to whom was referred the memorial of J. J. Lints, asking compensation for his services as custodian of the public property connected with the improvements of the harbor at Erie, Pennsylvania, having had the same under consideration, report:

It appears from official documents, that, in 1853, the memorialist was appointed local agent and engineer for the improvement of the harbor at Erie, Pennsylvania, at a compensation of $120 per month, by Colonel Abert, corps topographical engineers, with the approval of the Secretary of War. When the appropriation for the work became so far exhausted as to render it necessary to suspend operations, Mr. Lints was continued in service as custodian of the public property pertaining to the harbor, at a reduced compensation of two dollars per day. He now claims $1,236 compensation for his services as custodian, from the 8th of April, 1857, to the 16th December, 1858, inclusive, no part of which, he avers, has ever been paid him. The correctness of the account is admitted by the officer in charge of harbor improvements on the lakes, but an offset is made to the amount of $815 14, being the value of a certain amount of timber which disappeared or was lost whilst in charge of Mr. Lints. The memorialist prays that this shall not be charged against him, inasmuch as said timber was carried away and lost by storms, in part, and in part was stolen, neither of which was he able to control. A number of witnesses confirm this statement of Mr. Lints, and testify to his having been a faithful and attentive officer. He received no pay after the 8th of April, 1857, because the appropriation for the improvement of the harbor at Erie had been exhausted previous to that date. The committee think him entitled to the amount claimed, and report a bill accordingly.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 84.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1860.—Ordered to be printed.



Mr. NICHOLSON made the following

REPORT.

[To accompany Bill S. 224.]

The Committee on Revolutionary Claims, to whom was referred the petition of William Nason and others, legal representatives of John Lord, deceased, make the following report:

They have carefully examined the several papers on file in the case, and find them fully sustaining the report made to the Senate, on the 15th of February, 1858. The committee therefore adopt the said report as follows:

IN THE SENATE, *February* 15, 1858.

The Committee on Claims, to whom was referred the petition of William Nason and others, legal representatives of John Lord, deceased, report:

This claim is founded upon the allegation that John Lord served his country, during the war of the revolution, as a seaman on board the United States ship-of-war "Ranger," from April or May, 1779, to May, 1780, when she was taken at the surrender of Charleston, and that he was detained on board a guard-ship some time afterwards, and finally liberated about the last of July—making in all fifteen months. James Gooch deposes that he was purser and clerk of said vessel during the time mentioned; thinks Lord was aboard; that no pay-roll was made out, and no payments made to the men.

Joseph Wardwell, a shipmate of Mr. Lord, also testifies to the truth of the facts alleged.

In the original petition of Mr. Lord for the payment of this claim, which was presented to the 20th Congress, he assigns as the reasons why his claim was not sooner urged, that at the time of his discharge he did not know that any provision had been made by government for paying off the seamen; nor until 1798, when, on his return from a foreign voyage, he was informed by Captain Wardwell, (whose affidavit is in the case,) that he and other "Rangers" had been paid. He then

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applied to an agent to assist him in procuring his pay, but without success; and that it still remains unpaid.

It appears from statements that there are no records of the "Ranger" in either the Treasury, War, or Navy Departments.

The case has been twice favorably reported in the House of Representatives, and once a bill passed for its payment; but it being near the close of the Congress, the bill does not appear to have received any action in the Senate. No adverse report upon it appears to have ever been made.

The committee are of opinion that the evidence before them sustains the claim, and they report a bill for the payment of the amount of wages due, with interest thereon from the time that proof of the service rendered was produced and the claim was made upon the government for payment of what was then due.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 85.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1860.—Ordered to be printed.

Mr. POWELL submitted the following

REPORT.

[To accompany Bill S. 225.]

The Committee on Pensions, to whom was referred the petition of Annie D. Reeves, widow of J. S. K. Reeves, deceased, late captain in the first regiment of United States artillery, report:

That it appears from the rolls, that Captain J. S. K. Reeves, deceased, the husband of the petitioner, was appointed second lieutenant of the first artillery, July 1, 1838; first lieutenant, June 21, 1839; captain, April 1, 1850; and died, February 22, 1851.

The petitioner applies for a pension on the ground that her husband died of injuries received while in the line of his duty, in the service of the United States.

Charles McDougall, surgeon, of the United States army, certifies that Captain Reeves was under his professional treatment from June, 1846, to June, 1848, for disease of the left testicle, caused by an injury received while on drill at Fort Adams, Rhode Island, sometime in 1845, which he believes was the cause of his death, in February, 1851. C. H. Wheelingsly, surgeon, of the United States Navy, who attended Captain Reeves, at Pensacola, in 1846, states: "I have never doubted but that the injury which ultimately caused his (Captain Reeves's) death was received in the line of his duty." (See statements of surgeons McDougall and Wheelingsly.)

At the time of his death no report was made by a medical officer, as he did not die at a military post. Acting Surgeon General R. C. Wood, United States army, states that the certificate of Surgeon McDougall is, in his opinion, entitled to all the credit that would be given to a similar statement from the records of the surgeon general's office. Captain J. Jones, United States army, states that Captain Reeves was ordered to Pensacola, Florida, in anticipation and preparatory to the war with Mexico, and that his health was so much impaired that he was unable to go with his company to Mexico, and was assigned duty at West Point. That he was at the post with Captain Reeves when he received the injury, went with him to Pensacola, and was subsequently with him between three and five years during his illness, and never

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doubted that his disease was caused by the injury he received while drilling his company at Fort Adams. Under the general laws relating to the peace establishment, pensions are granted to widows whose husbands die by reason of any *wound* received in actual service. Had petitioner's husband died from wounds, injuries, or disease contracted in any war, she would have been entitled to a pension for life, under the general law. We are of the opinion that the case of the petitioner comes within the spirit, if not the letter of the law; that her case is a meritorious one.

Your committee report a bill for her relief, and ask its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 86.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1860.—Ordered to be printed.

Mr. POWELL submitted the following

REPORT.

The Committee on Pensions, to whom was referred the papers of Jane Perry, widow of the late Commodore M. C. Perry, United States navy, report:

That no petition of Mrs. Perry accompanies the papers, and it appears that she has made no application to the Pension Bureau for a pension. The proof establishes the fact that Commodore Perry died of gout, or rheumatism, in the heart. There is no evidence before the committee that the disease of which he died was contracted while in the line of his duty. If Commodore Perry died in consequence of disease contracted, or of injuries or casualties received while in the line of his duty, his widow, under the general law, (see act 3d of March, 1817,) by application to the Pension Bureau, and making satisfactory proof that her late husband died in consequence of disease contracted, or of casualties or injuries received while in the line of his duty, would be entitled to receive a pension. If proof were now made, or should be hereafter made, that Commodore Perry died of disease contracted, or casualties or injuries received while in the line of his duty, the general law, as it now is, affords his widow the relief now asked. We do not think Mrs. Perry entitled to a pension, unless her case is brought within the provisions of the act above referred to; in that event, no special legislation is required, the general laws affording abundant relief.

Your committee, therefore, beg leave to offer an adverse report.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 87.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

MR. BRAGG submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of Eliza E. Ogden, have had the same under consideration, and submit the following report:

The petitioner states that she is the widow of the late Major Edmund A. Ogden, assistant quartermaster in the United States army, and she asks that a per centage may be allowed her upon public money disbursed by her said husband.

From a statement furnished by the Third Auditor of the Treasury, it appears that the sum of $116,040 were disbursed by Major Ogden, out of appropriations for the suppression of Indian hostilities, and $279,238 10 during the Mexican war; making an aggregate of $395,278 10; and that these disbursements were made between the 1st October, 1840, and the 30th September, 1849.

The third section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year 1839," and approved March 3, 1839, is as follows:

"*And be it further enacted*, That no officer in any branch of the public service, or any other person, whose salaries, or whose pay or emoluments is or are fixed by law or regulations, shall receive any extra allowance or compensation, in any form whatever, for the disbursement of public money or the performance of any other service, unless the said extra allowance or compensation be authorized by law."

The compensation claimed is for disbursements of public money since the passage of that act; and the committee are unable to see any reason why the provisions of the act should be disregarded in this case. They recommend the adoption of the resolution herewith reported.

Resolved, That the claim of Eliza E. Ogden be rejected.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 227.]

The Committee on Pensions, to whom was referred the petition of Laura C. Humber, widow of the late Captain Charles W. Humber, beg leave to report:

That it appears from the records of the War Department, the husband of the petitioner entered the United States army as a cadet in September, 1835, was second lieutenant of seventh infantry July 1, 1840; first lieutenant, September, 1845; brevet captain, "for gallant and meritorious conduct in the battle of Cerro Gordo, 18th April, 1847;" severely wounded at San Geranimo, 19th August, 1847; and died at Fort Smith, Arkansas, January 2, 1858.

The petitioner prays a pension on the ground that her husband died of disease contracted in the line of his duty, in the service of the United States, in the war with Mexico.

The following facts appear in support of her claims: Surgeon J. M. Getty, of the United States army, under date of the 26th October, 1857, certifies that he had carefully examined Captain Humber, "and that he had a stricture of the uretha, with disease of the prostrate gland, from which he has suffered for ten or more years, and that in consequence, in my opinion, he is unfit for duty."

Assistant Surgeon Page, United States army, under date of January 16, 1858, says, that Captain Humber was suffering from chronic meninges, which, it is probable, was caused by the exposure incident to his service in the army, and while in the line of his duty; that the disease may have had its origin from the heat of a tropical sun, while he was on duty in Mexico. He further states, that Captain Humber died from chronic meninges, which, it is probable, was caused by the exposure incident to his service in the army, and while in the line of his duty. The disease may have had its origin from the heat of a tropical climate, while he was on duty in Mexico.

Albert F. Dunlap, M. D., states that he acted in the capacity of assistant surgeon, (his certificate dated 20th October, 1858,) and that

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the disease of Captain Humber was "chronic enlargements of the prostrate gland, which was aggravated by riding on horse back, the general state of his health rendering him unable to march on foot."

The committee, under a full examination of the testimony, are of the opinion that the petitioner is entitled to relief; and, therefore, report the accompanying bill.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 89.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 228.]

The Committee on Pensions, to whom was referred the petition of Valentine Wehrheim, an applicant for increase of pension, having had the same under careful examination, beg leave to report:

That the evidence shows said Wehrheim served as a private in the Mexican war; was disabled by wounds received at the battle of Buena Vista by a musket ball passing through his body, which has resulted in total blindness and almost total deafness; that he is entirely disabled and disqualified for making the least possible support for himself and a helpless family.

The petitioner appeared before the committee, and they are satisfied from his appearance and from an inspection, that he is not capable of attending to the ordinary functions of life without assistance.

Surgeons Bond and Homann, of the State of Illinois, certified to be of good standing in their profession and credible witnesses, testify that petitioner is entirely blind and almost entirely deaf, and (as they believe) from the effects of a wound received during the Mexican war, and is totally disabled.

John G. T. Holston, M. D., Professor of Surgery in the National Medical College, Washington city, D. C., states that he has examined said Wehrheim, that he is blind, partially deaf, and in very precarious general health; that his present state of disability is traceable to a gun-shot wound through the liver in the war with Mexico.

Surgeon General Lawson, and Assistant Surgeon Coolidge, United States army, state that upon examination "we find petitioner blind in both eyes, and deaf in both ears, and from official papers, caused by a gun-shot wound received in the battle of Buena Vista, the ball having entered the right side in the region of the liver, passed out in the back."

They further say: "We have seen no case which appeals with more force to our sympathies, or which deserves, in a higher degree, the favorable consideration of the Congress of the United States."

The committee, therefore, beg leave to report the following bill, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 90.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 150.]

The Committee on Indian Affairs, to whom was referred the memorial of M. Sweetser, report:

That during the year 1852, and prior thereto, the memorialist was a licensed trader, and had a store of goods at Traverse des Sioux, in Minnesota, upon the Minnesota river; and that during said year certain bands of said Indians, being in a suffering and destitute condition, he supplied them with provisions, blankets, guns, and ammunition, absolutely necessary for their support and preservation. That in general council of said Indians, (the See-se-ton and Wah-pay-toan bands of Sioux,) they acknowledged their indebtedness for those supplies, and gave to said Sweetser a certificate, or order, payable out of their annuities, as the general fund for that purpose appropriated, by the then recent treaty between them and the United States, had been exhausted in the payment of older, but similar claims. The certificate of indebtedness was for the sum of $11,969 71, which corrected was then supposed to be the true amount, but was subsequently, and as will be seen, was clearly demonstrated to be less than the true amount; that afterwards, when this certificate was presented for payment to the Indian Office, it was refused upon the ground that the items should be stated, and that the justice of the claim, verified by other testimony than that afforded alone by this certificate. To that end, a commission was appointed, consisting of Governor W. A. Gorman, then, by virtue of his office, Superintendent of Indian Affairs, and the local agent, R. W. Murphy, to investigate this claim. That this commission discharged their duty by a rigid scrutiny of the books and accounts of the memorialist, an examination of his clerk under oath, who was cognizant of the whole transaction, and by inquiry of the Indians in open council. Their final report disclosed the fact that, in consequence of omissions in drawing off the items from the original entries, the true amount was $13,108 68, thus making a difference of $1,138 97, the amount now claimed as due by the memorialist. That in consequence of some of the items being charged at a higher rate than the commissioners deem it fair and usual, they recommended a deduction of $500 from the amount found by them to be really due. That in the

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payment of the claim, the Commissioner of Indian Affairs deducted the sum of $500, not from the sum found due by the commissioners, and from which they recommended its deduction as just, but from the amount of the certificate given by the Indians, which was ascertained to be a mistake. The committee are at a loss to know upon what ground this was done. The certificate of indebtedness by the Indians was very properly regarded as inconclusive against them; and as it turned out to be a mistake, upon investigation by the commissioners, a tribunal appointed alone by the United States, it was evidently inconclusive against the memorialist. They think, therefore, that, after the investigation by the commissioners, which was plenary and conclusive, the old certificate was worthless, either as an obligation against the Indians or as an admission by the memorialist. This is in conformity with the policy of the government towards the Indians. They are legally incompetent, by statute, and from their subordinate relation to the United States, to bind themselves by any contract. When the government countenances such contracts, it is done not from respect to their intrinsic obligation, but because they are ascertained to be fair and just, and because their enforcement discharges its duty as trustee between the Indians and their honest creditors.

A claim is also presented verbally by the memorialist, for interest. The committee cannot sanction this, in this case. The United States undertakes to disburse a fund of the Indians to pay an honest debt of the Indians. It is in the nature of a trust fund, which ought not to be burdened with a charge of interest where they have not been delinquent. The delay, and the resort to this mode of redress, has been the result alone of the act of an official of the United States. Whatever claim for interest may arise is, if just, a charge exclusively upon the Treasury of the United States. The committee, therefore, report the bill referred without amendment.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM No. 91.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. POWELL made the following

REPORT.

[To accompany Bill S. 229.]

The Committee on Pensions, to whom was referred the petition of Angelina C. Bowman, widow of Francis L. Bowman, praying to be remunerated for the expense of conveying the remains of her husband to his home in Pennsylvania, and to be allowed a pension, having had the same under consideration, beg leave to submit the following report:

That it appears at the 2d session of the 35th Congress the petitioner prayed Congress to grant her relief; that a favorable report was submitted, which your committee adopt, and submit a bill.

"The petitioner is the widow of the late Francis L. Bowman, formerly, and at the time of his death, a captain in the army of the United States, stationed at Fort Simcoe, in Washington Territory.

"In September, 1856, the said Captain Francis L. Bowman began to exhibit signs of insanity, and it was thought expedient to convey him from Fort Simcoe to the Dalles, under a military escort, and in charge of the assistant surgeon of the United States army. On his way thither he escaped from his escort, and from the mangled condition of his remains when found, is supposed to have been killed by wild beasts. His widow prays to be remunerated for the expense of conveying his remains to the United States, and also to have her name placed upon the pension roll. The committee beg leave, inasmuch as there is no precedent to be found or known where reimbursements have been made for the removal of the remains of officers of the army, and as it does not feel authorized to establish such a precedent, to report adversely upon that portion of the petition. But inasmuch as it has been proved, by evidence adduced since the last session of the present Congress, that Captain F. L. Bowman was in the service of the United States during the late war with Mexico, and served during said war as major in the first regiment of Pennsylvania volunteers; that previous to his entering said service he had always enjoyed good health, and was a man of sound constitution, unaffected by any permanent disease; that while in said service his health became very greatly impaired and his constitution broken by reason of his exposure and hard service during said war, from which he never recovered; but continued to suffer from the effects of disease contracted in said service up to the time of his death; the committee believe that the insanity which resulted in his unfortunate death was caused by the disease contracted while in the said service in the late war with Mexico."

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. TEN EYCK made the following

REPORT.

[To accompany Bill S. 95.]

The Committee on Revolutionary Claims, to whom was referred Senate bill No. 95, being a bill for the relief of Elizabeth Montgomery, heir of Hugh Montgomery, having had the same under consideration, and concurring in the views of this committee, at last session of the 34th Congress, as explained in their report of that session, adopt that report as their own, at the present session; and they accordingly report the bill back to the Senate, without amendment, and recommend its passage.

The report above referred to, is as follows:

IN THE SENATE OF THE UNITED STATES, *January* 22, 1857.

The Committee on Revolutionary Claims, to whom was referred the petition of Elizabeth Montgomery, daughter of Captain Hugh Montgomery, praying relief, beg leave to report:

The memorial of the petitioner, which is very circumstantial in substance, presents these facts: She is the daughter of Captain Hugh Montgomery, formerly of Wilmington, in the State of Delaware, and employed as captain of the brig Nancy, of that port, belonging to himself and others. That in the latter part of the year 1775 the said brig, chartered by Robert Morris, then a member of Congress, was despatched to the West Indies with a cargo of flour to be sold, and the proceeds returned to the United States in gunpowder and munitions of war. The cargo was sold at Porto Rico, and the Nancy then proceeded to St. Croix, where she was privately loaded with her return cargo, consisting of 460 barrels of gunpowder, six long four-pounders, sundry chests of small-arms, and other munitions of war, and with sundry articles of merchandise belonging to the said Montgomery. After the reception of his cargo, by means of the cannon, and some swivels and other arms, Captain Montgomery converted his ship into a vessel of war, and sailed for the Delaware, in order that he might deliver his cargo at Philadelphia, according to his directions.

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When he approached the Delaware capes, he was intercepted by two British ships-of-war. He succeeded in beating off the boats sent to capture him; but finding it impossible to escape capture, he ran his ship into shoal water, and commenced removing the powder and munitions of war to the shore, and securing them from capture, leaving the private property to its fate. He kept off the enemy's boats whilst he landed 244 barrels of the powder, the cannon, small-arms, and other munitions of war, with the aid of Captain Weeks, who commanded some American vessels of war within the Capes. When he had so far succeeded in saving the cargo, one of the enemy's vessels approached within three hundred yards, cast anchor, and opened a destructive fire, whilst several boats filled with men approached for the purpose of boarding the Nancy. Finding it impossible to save more of the powder and the private property, he left the vessel, having laid a train and a match communicating with the powder, preferring to destroy both his vessel and the rest of her cargo, rather than it should fall into the hands of the enemy. The boats' crews had scarcely taken possession of the vessel, when she was blown up, with all on board, and, with the remains of her cargo, was destroyed. That part of the cargo which had been saved was transported to Philadelphia, and safely delivered to the agents of the government. Subsequently to this, Captain Montgomery went to sea in a private armed ship, was captured by a British cruiser, imprisoned for a long time, and treated with great harshness on account of the destruction of so many British sailors, by blowing up his vessel, as before stated. During his long imprisonment his mind became disordered; and during his voyage homeward, after his relief, he leaped overboard in a fit of insanity, and was drowned; leaving a widow, who has been long dead, and the petitioner, his only child, then a small girl.

The petitioner prays that Congress should make her some compensation for the losses of her father, sustained in the destruction of his vessel, as before stated, and for his patriotic conduct in saving the public property, then so much needed, to the neglect of his own, which he might have saved, instead of that which belonged to the public.

A claim is set up for the value of this private property, shipped on board the Nancy on his own account. But of this no satisfactory evidence has been given, and the committee have been unable to form any estimate of its value. As to the other part of the claim, the main facts are fully proved by an affidavit of Captain Mendenhall, who was one of the crew of the Nancy, and cognizant of all the facts of the voyage, and the safe landing of the greater part of the munitions of war. The blowing up of the vessel and the saving of the gunpowder are stated in an original letter, filed with the evidence, from George Reed, one of the signers of the Declaration of Independence, to his wife, dated the 6th of July, 1776, a few days after the occurrence. And on the whole, the committee are of opinion that the facts hereinbefore set forth are satisfactorily proved.

If, as is alleged, the vessel was chartered for the purpose set forth, it is presumed no doubt could exist that the government ought to pay; the destruction being beneficial to it, and inevitable, under the cir-

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cumstances, to prevent the vessel and her cargo from falling into the hands of the enemy. Many claims of this kind have been paid.

The great difficulty in allowing this claim is its antiquity; but in this case the delay is satisfactorily accounted for.

On a review of the whole case, the committee have come to the conclusion that the petitioner ought to be liberally remunerated, to the extent of any loss sustained in the destruction of the vessel by her father. But after such a length of time no evidence could be furnished of the value of the vessel. Any estimate would be conjectural; but as the claim is a just one, they have come to the conclusion to give her $5,000, as a full and final satisfaction of her claim, and report a bill for that purpose.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. FOOTE made the following

REPORT.

[To accompany Bill S. 230.]

The Committee on Claims, to whom were referred the cases of Letitia Humphreys and of Robert Harrison and other claimants, under the treaty of 1819 with Spain, together with voluminous documents in relation to said claims, have had the same under consideration, and, after a careful and patient reëxamination of the whole subject, have reached the same conclusion at which this committee arrived the first session of the last Congress, and adopt the report then made by this committee through the honorable Mr. Clarke, of New Hampshire, then a member of the committee, as presenting a succinct and fair view of the origin and nature of these claims, and which report is in the following words:

A.

The Committee on Claims, to whom were referred the reports of the Court of Claims, in the cases of Letitia Humphreys, administratrix of Andrew Atkinson, deceased, and of Robert Harrison; and also the memorial of the said Harrison to Congress, praying, in behalf of himself and other claimants, the full and faithful execution of the 9th article of the treaty of 1819 *with Spain, by the payment of the residue of the decrees made by the United States judges in their favor, report:*

That they have examined the facts and principles of law connected with these cases, with the care and mature deliberation which the importance of the principles and the magnitude of the aggregate amount involved seemed to require.

The cases referred belong to a class, all depending on the same principles and considerations arising under the last clause of the ninth article of the Florida treaty of 1819.

In order that the Senate may fully understand the decision of the Court of Claims on the cases reported, and the merits of the class of claims to which the cases referred belong, the committee deem it proper to give a succinct statement of their nature and origin.

In 1811, relations of peace and amity existed between the United States and Spain, under the treaty of 1795; but the relations between

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the United States and Great Britain, and between the latter power and Spain, were of such a character as to create apprehensions on the part of the United States that Great Britain would seize the provinces of East and West Florida, then a dependency of the crown of Spain; and the United States having long looked to a cession of those provinces as an indemnity for her just claims upon Spain, and being unwilling, from their geographical position, that any other power should possess them, and especially Great Britain, with whom we were then on the eve of war, Congress, on the 15th day of January, 1811, passed an act and joint resolution, by the former of which the President was authorized to take possession of the Floridas, "in case any arrangement has been, or shall be, made with the local authority of said territory for delivering up the possession of the same, or any part thereof, to the United States; *or* in the event of any attempt to occupy the said territory, or any part thereof, by any foreign government." (3 Stats. at Large, pp. 471, 472.) And for that purpose, the President was authorized by that act to employ any part of the naval and military forces of the United States; and $100,000 was appropriated for that object.

General George Matthews and Colonel John McKee were appointed military agents or commissioners of the United States, by the President, with secret instructions "to repair to that quarter with all possible expedition," for the purpose of carrying out the intention of the act of Congress, with authority, if necessary, to call to their aid the naval and military forces of the United States in that quarter of the Union, the commanders of which had been instructed to obey their orders. (American State Papers, vol. 3, Foreign Relations, p. 571.)

No surrender of that province was made by the governor, and the agent of the United States proceeded to take possession of the whole inhabited portion of East Florida, except the city of Saint Augustine, including Amelia island and the neutral port of Fernandina; and this possession, thus acquired, was forcibly maintained until about the middle of May, 1813, when the United States troops were withdrawn by command of General Pinckney.

As this occupation of East Florida by the American forces was strenuously and forcibly resisted by the Spanish authorities thereof, a feeling of great bitterness on the part of the invading forces was excited against the loyal Spanish inhabitants and officers; and an occupation of the province, which was only intended by Congress, in the condition of things found to exist, to be peaceful on the part of the United States, and voluntary on the part of Spain, was converted into a forcible occupation by the agent of the United States.

These injuries of 1812 and 1813, which were protested against by Spain, were in open violation of the law of nations and of the treaty of peace then existing between the two governments, and were so admitted to be by the United States; and their commissioner, General Matthews, was punished by dismission. (Am. State Papers, above cited.)

During the war between the United States and Great Britain, in 1814, West Florida was entered by General Jackson and the army

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under his command, to expel the British and their Indian allies from Pensacola; and in 1818, the same officer again entered West Florida, in pursuit of the Indians, and St. Mark's and Pensacola were taken, and subsequently restored.

Both these last-named invasions of General Jackson and his army were also complained of by Spain as violations of her neutrality; but were justified, or sought to be excused, by the United States, on the ground of necessity; while no such ground was ever urged in justification of the invasion of East Florida, in 1812 and 1813.

It appears, from the correspondence between Mr. Adams and Mr. Onis, which led to the treaty of 1819, that *mutual indemnities* for all injuries were fully agreed upon *before General Jackson entered Florida in* 1818.—(American State Papers, Foreign Relations, vol. 4, pp. 465, 467, 475.)

For all these injuries, Spain earnestly demanded satisfaction; and when the treaty of 1819 was concluded, the followiug provision was inserted, and constitutes the last clause of the 9th article of that instrument, viz:

"The United States will cause *satisfaction* to be made for the injuries, if any, which, *by process of law*, shall be established to have been suffered by the Spanish officers and individual Spanish inhabitants by the late operations of the American army in Florida."—(Statutes at Large, volume 8, p. 260.)

"To carry into effect" this provision of the treaty, Congress passed the act of March 3, 1823, which is as follows:

"AN ACT to carry into effect the ninth article of the treaty concluded between the United States and Spain the twenty-second day of February, one thousand eight hundred and nineteen.

"SEC. 1. That the judges of the superior courts established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby, authorized and directed to receive and adjust all claims arising within their respective jurisdictions, of the inhabitants of said territory or their representatives, agreeably to the provisions of the ninth article of the treaty with Spain, by which the said Territory was ceded to the United States.

"SEC. 2. That in all cases in which said judge shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be, by the said judges, reported to the Secretary of the Treasury, who, on being satisfied that the same is just and equitable, within the provisions of the said treaty, shall pay the amount thereof to the person or persons in whose favor the same is adjudged, out of any money in the treasury not otherwise appropriated. Approved, March 3, 1823."—(3 Statutes at Large, p. 768.)

After the passage of the said act, the judges proceeded to adjust "claims arising within their respective jurisdictions," upon sworn petitions of the claimants and proofs taken, as in chancery or admiralty cases. The judge of West Florida made decisions or awards for injuries suffered from the invasion of 1814 in that province; and the judge of East Florida, in like manner, proceeded to receive and adjudge

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claims for the injuries resulting from the invasion of 1812 and 1813 in that province.

Mr. Secretary Crawford, however, decided that the injuries of 1814 in West Florida were not embraced by the treaty—either from the supposed import of the word "late" in the English original, (but not in the Spanish,) and which was construed to be synonymous with *latest* or *last*, and therefore only applicable to the invasion of 1818, or because the invasion of West Florida in 1814, during our war with Great Britain, to expel the British forces and their Indian allies from neutral territory used to originate operations against the United States, was justified by the law of nations, and therefore was no injury, within the true meaning of the treaty of 1819. Both these reasons were urged against those claims.

When the decisions of the judge of East Florida, in favor of the claimants, for injuries resulting from the invasions of 1812 and 1813, were reported to the Treasury, Mr. Secretary Rush, the successor of Mr. Crawford, applied Mr. Crawford's decision to those claims, though the United States had never attempted to justify that invasion as authorized by the law of nations, as they did the invasions of 1814 and 1818 in West Florida, by rejecting them. The claimants for injuries in 1812 and 1813, therefore, petitioned Congress for relief against this erroneous construction of the treaty; and Congress, by the act of 26th June, 1834, overruled the decision of Mr. Secretary Rush, that the injuries of 1812 and 1813 were not within the provisions of the treaty of 1819, by the passage of the act of the 26th June, 1834, which is as follows:

"AN ACT for the relief of certain inhabitants of East Florida.

"*Be it enacted, &c.*, That the Secretary of the Treasury be, and he hereby is, authorized and directed to pay, out of any money in the treasury not otherwise appropriated, the amount awarded by the judge of the superior court at St. Augustine, in the Territory of Florida, under the authority of the 161st chapter of the acts of the 17th Congress, approved March 3, 1823, for losses occasioned in East Florida by the troops in the service of the United States, in the years 1812 and 1813, in all cases where the decision of the said judge shall be deemed by the Secretary of the Treasury to be just: *Provided*, That no award be paid except in the case of those who, at the time of suffering the loss, were actual subjects of the Spanish government: *And provided also*, That no award be paid for depredations committed in East Florida previous to the entrance into that province of the agent or troops of the United States.

"SEC. 2. *And be it further enacted*, That the judge of the superior court of St. Augustine be, and he hereby is, authorized to *receive, examine, and adjudge* all cases of claims for losses occasioned by the troops aforesaid, in 1812 and 1813, not heretofore presented to the said judge, or in which the evidence was withheld, *in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty of February 22, 1819, between the governments of the United States and Spain: Provided*, That such claims be presented to

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the said judge in the space of one year from the passage of this act: *And provided also,* That the authority herein given shall be subject to the restrictions created by the provisos to the preceding section."—(6 Statutes at Large, p. 569.)

At the time of the passage this act, claims for injuries in East Florida, in 1812 and 1813, amounting to $214,676, had been presented to the judge of East Florida, and decrees in favor of the claimants had been made for the sum of $44,338. The first section of this act made an appropriation for the payment of the awards which were made previous to its passage, accompanied by provisions prohibiting payment unless the "claimants were actual subjects of the Spanish government," and unless the depredations were committed after "the entrance into that province (East Florida) of the agent or troops of the United States," upon the ground that such claims would not be within the provisions of the treaty.

This act made no other appropriation, and no claim is now made under any of the awards provided for by the first section thereof, as no award of damages under the name of interest had been made before its passage.

The claims provided for by the second section of this act being claims not then presented to the judge, or, if presented, being cases in which proceedings had been suspended, "in consequence of the decision of the Secretary of the Treasury that such claims were not provided for by the treaty," were left to be paid out of the general appropriation made by the second section of the act of 3d March, 1823, passed to carry the treaty into effect, and have been so paid, as far as payments have been made.

Whenever the term of office of the judge of the superior court for the district of East Florida expired by death, resignation, or removal, the duty of adjudicating these claims was, with full sanction of the Secretary of the Treasury, performed by his judicial successor; and when Florida was admitted into the Union as a State, and the federal jurisdiction of the territorial judges was transferred to the United States judge, the duty of abjudicating such of these claims as yet remained to be decided was devolved upon the judge of the district court of the United States for the northern district of Florida by the act of 22d February, 1847.—(9 Statutes at Large, p. 130.)

A number of the claimants having failed to present their claims to the judge within the time limited by the 2d section of the act of 26th June, 1834, aforesaid, Congress, by an act approved on the 3d March, 1849, directed the United States judge for the northern district of Florida to "receive and adjudicate" their claims, and directed that they should be "settled," not adjudicated at the treasury, as other claims under the act of 26th June, 1834, with the following provisos:

"*Provided, however*, That the *petition* for the allowance of such claim shall be presented to said judge by the proper parties entitled to prefer the same within one year from the passage of this act: *And provided also*, That said parties shall, respectively, allege in such *petition*, and prove to said judge reasonable cause for such *petition* not having been presented within the time prescribed and enacted by said act of June 26, 1834."—(9 Statutes at Large, p. 788.)

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After the passage of the act of June 26, 1834, recognizing the injuries of 1812 and 1813 to be within the provisions of the treaty, and requiring the judge of the superior court of St. Augustine to "receive, examine, and adjudge" the same, the Hon. Robert Raymond Reid, then the judge of the said court, proceeded to adjudicate the said claims, and to report his decisions to the Secretary of the Treasury, according to the provisions of the act of 3d March, 1823, passed to carry the said treaty into effect. After he retired from office, the same duties continued to be performed by his successor, the Hon. Isaac H. Bronson, until Florida was admitted into the Union as a State, when judge Bronson, having been appointed United States judge for the northern district of Florida, continued and closed the said duties. The mode of proceeding in these cases, prescribed by the judge, and sanctioned by the Treasury Department, was as follows:

"Each claimant presented his claim by petition, verified by oath, and alleging, as required by the rules prescribed by the court, the nature and extent of his losses, and the facts necessary to show that the claim was within the provisions of the treaty. The judge examined the witnesses when personally brought before him, and when their testimony was taken by deposition, he selected and instructed the commissioners, and propounded cross-interrogatories to the witnesses, as is shown by the report of the Court of Claims in the case of Humphreys, and by the records remaining on file in the Treasury Department.

"All the evidence was recorded, and a copy of it, and of the decree of the judge, when '*in favor of the claimants*,' was reported to the department for payment, as required by the act of 1823.

"In making up his awards or decrees, the judge allowed, as the just and proper measure of damages under the law of nations necessary to fulfil the stipulations of the treaty, the proved value of the property at the time of the injury or loss; and, by way of satisfaction for the further loss of the use, fruits, or profits of the property, whilst wrongfully deprived of them, and of the just satisfaction for them which the law of nations required; and, during the period that no provision of law existed for the presentation and payment of said claim, he added five per cent. interest, by way of damages, and as an equitable measure of damages, to the original value of the property, (being the legal rate of the country,) and made a formal decree that the United States pay the same to the claimants. The decrees thus made *in favor of the claimants* were, as before stated, reported to the Secretary of the Treasury for payment; when *against them*, they were deemed *final*, and were never reported to the Secretary. The report of the Secretary of the Treasury to the Senate shows that more than half the amount of the claims presented were thus finally disposed of by the judges—thus making the decision of the judges *against* claimants final and conclusive, whatever may have been the effect of decisions *in their favor*."

Judge Reid's reasons for allowing interest by way of damages, as reported to the Secretary of the Treasury, are as follows:

"I am required by the statute to receive, examine, and *adjudge* these claims for losses. In performing this duty, I have allowed, be-

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cause it seemed just and equitable to allow it, *interest* upon the amount or value of the property ascertained to have been lost. The rate of interest existing in the province at that time (1812 and 1813) was five per cent., and this is the sum allowed in all cases. I am sensible that this allowance will swell considerably the amount to be paid to the claimants, but I do not perceive how it could be avoided. If we lose sight of the national character of one of the parties, and suppose two private persons engaged in a dispute about an injury to property, the tribunal to which resort is had, in adjusting the damages due by the one to the other, will consider the value of the property destroyed, in connection with the time for which the owner has been deprived of the use and enjoyment of his property. The first being ascertained in money, a compensation for the last may best be regulated by reverting to the rate of interest allowed by the law of the country where the wrong was done.—(Report of Court of Claims in Robert Harrison's case, p. 78.)

When these claims reached the treasury, they were subjected to the same scrutiny as claims which had never been adjudicated.* The Secretaries claimed the right to go fully into the merits of the claims upon the evidence reported, and called upon the judge for further evidence whenever they entertained a doubt. In regard to the damages decreed for the loss of the use and fruits of the property, it was rejected, in all instances, under the mere *usage* of the Treasury Department in reference to domestic pecuniary demands, without any reference to the treaty or the law of nations.

Secretary Woodbury's first decision, disallowing the damages decreed under the name of interest, was made on the 20th December, 1836, in the case of John Gianopoli, in which, in allowing the claim, he added the words, "with the exception of interest, which it is believed has not been allowed in claims similarly situated."—(1 *vol. Judicial Records, Treasury Department, folio* 145. *Letter of William L. Hodge, Acting Secretary of the Treasury, to Hon. Wm. A. Graham, dated June* 9, 1851. *Ex. Doc. No.* 68, 2*d sess.* 24*th Cong., H. R ; Ex, Doc. No.* 98, 3*d sess.* 25*th Cong., H. R.*)

Mr. Secretary Guthrie, in a letter to the Attorney General in relation to these claims, dated the 4th November, 1854, says:

"This latter part of these claims (the interest) awarded by the judges was first rejected by Mr. Secretary Woodbury, under '*the usage of the Treasury Department*,' in the case of the heirs of John Gianopoli, the sum allowed as the value of the property on which was paid on the 5th June, 1837, as shown by the accompanying papers; and the decision thus made *has continued to govern in these cases to the present time.*"—(*Report of the Court of Claims in Harrison's case, p.* 81.)

Secretaries Ewing, Forward, and Bibb, who acted on these claims after Mr. Woodbury, and followed his precedent in rejecting the part of the damages or satisfaction decreed by the judges under the name of interest, have all certified that they did so under the mere *usage* of

*Report of Court of Claims in Robert Harrison's case, pp. 34, 35, 36, and 37.

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the Treasury Department, and without any reference to the treaty or law of nations, and without any inquiry whether the payment of that part of the award of the judges was necessary to make the "satisfaction" stipulated by the treaty, and they all express the opinion that such payment is necessary to fulfil the stipulation of the treaty.—(See Report of the Court of Claims in Harrison's case, pp. 100 to 114; also the report of Judge Bibb, assistant Attorney General, to the Attorney General, from p. 81 to p. 109 of the same document; also the statement of Mr. McClintock Young, late chief clerk of the Treasury Department, from pages 34 to 37 of the same document.)

Mr. Secretary Walker referred the question of the claimants' right, under the treaty and law of nations, to this part of the damages decreed by the judges, to the Attorney General in 1849. An opinion was given in 1851 affirming that right, and declaring the inapplicability of *departmental usage* to *treaty cases*, but advising the Secretary to adhere to Mr. Woodbury's precedent, which had been followed by his successors in these cases, and leave the claimants to seek redress in Congress.

A similar reference was made by Mr. Secretary Guthrie, and a similar answer from the Attorney General given, with a recommendation that the whole class of claims be referred by the department to Congress.

In 1851, after the opinion of the Attorney General was given, recognizing the right of the claimants, under the treaty and law of nations, to the damages decreed under the name of interest, but advising an adherence to Mr. Woodbury's precedent of rejecting it under the usage of the department, and leave the claimants to seek relief in Congress, one of the claimants petitioned Congress for such further legislation as might be necessary to the full execution of the treaty, by the payment of that portion of the damages allowed by the judge under the name of interest, and rejected by the Secretary of the Treasury under the usage of his department. The memorial was referred to the Judiciary Committee of the Senate, and that committee reported that the acts already passed were intended, and were sufficient, to carry the treaty into full effect, and that "no additional legislation was necessary;" and this report was unanimously concurred in by the Senate.—(*Report of the Court of Claims in Harrison's case, pp.* 118, 119, 120.)

Having shown that the claims of the memorialists are within the treaty, and so declared by Congress, the next duty of the committee is to ascertain the extent of the "satisfaction" which the United States stipulate in the treaty shall be made for the injuries suffered by the Spanish inhabitants of Florida during the invasion by the American army.

The question as to what constitutes satisfaction in a case like the present is not a new one. It has often been decided, and was long since settled. The "satisfaction" to be made by the United States, in pursuance of the stipulation of the ninth article of the treaty of 1819, is a satisfaction for "injuries" suffered by the Spanish inhabitants of Florida from the acts of our army in 1812 and 1813. The term "satisfaction," when used to measure the compensation to be made for

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injuries to property in violation of the law of nations, embraces the fullest measure of redress enjoined by the great international code designed to regulate the intercourse and settle the controversies of nations.—(See Wheaton on International Law, pp. 340, 341, 342, and 576; 1 vol. Kent's Com., p. 61; Vattel, book 2, ch. 18, sec. 324; Ib., book 3, ch. 11, sec. 185; Campbell's Grotius, vol. 2, book 2, ch. 17, p. 192.)

Satisfaction, when used in the sense of redress for injuries to property, consists in the value of the property taken or destroyed, and damages for its detention or the loss of its use until the time of payment. In the case of the Pacific Insurance Company *vs.* Conrad, 1 Baldwin, C. C. R., p. 138, Judge Baldwin says: "The value of the property taken, with interest, from the time of the taking down, to the time of the trial, is generally considered as the extent of the damages sustained." Rutherford, book 1, ch. 17, sec. 5, pp. 390, 391, lays down the rule in the following words: "In estimating the damage which any one has sustained when such things as he has a perfect right to are taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of a thing, is likewise the owner of such fruits or profits; so that it is as properly a damage to be deprived of them, as to be deprived of the thing itself."

In the case of the Amiable Nancy, 3 Wheaton, 560, the Supreme Court of the United States says: "It was, after strict consideration, held, that the prime cost or value of the property lost, at the time of the loss, and, in case of injury, the diminution in value by reason of the injury, with *interest* upon such value, afforded the true measure of assessing the damages." In the case of the Lively, 1 Gallison, R. 315, Judge Story says: "The proper measure of damages, in cases of illegal capture, is the prime value, and interest to the day of the judgment."

The rule as to the measure of satisfaction is the same in the prize courts of Great Britain.—(Case of the Acteon, 2 Dodson, p. 84.)

Prize courts are governed by the laws and usages of nations, (1 Kent's Com., pp. 19, 68, 69, 70; Wheat. Int. Law, p. 47; Adeline and Cargo, 9 Cranch, p. 191, also 242.) Wheaton on International Law, p. 341, says: "If a nation has taken possession of what belongs to another, if it refuses to pay a debt, or repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former, and apply it to its own advantage until it obtains payment of what is due, together *with interest and damages.*"

The civil and common law are governed by the same rule in measuring damages in cases of conversion or trespass. The value of the property with interest, *by way of damages,* from the time of the trespass or conversion, is the rule of both.—(Sedgwick on Measure of Damages, pp. 549, 550, 551; 7 Wend., 354.) For the rule of the civil law, see Domat., vol. 1, Lib. 3, Tit. 5.

The rule by which damages, in the name of interest, are allowed in cases like the present is supported by an unbroken current of authorities, derived as well from writers on the law of nations as from

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the decisions of the highest courts in Great Britain and the United States; and the authorities and precedents drawn from these sources have been invariably insisted on by the government of the United States, when seeking redress from other nations for injuries which our citizens have sustained at their hands. Our government has demanded, and uniformly obtained, the fullest measure of indemnity, interest as well as principal being on all occasions exacted. In these cases the United States are solemnly bound by the treaty to Spain that satisfaction should be made for the injuries suffered by her subjects from the operations of our army. What was meant by the term satisfaction, taken in connection with the rule of the law of nations known and understood by both parties, and always acted upon by the United States in seeking indemnity for injuries due to their own citizens at the hands of others? Did it mean that those who suffered injuries should be indemnified; that they should be paid the amount of the losses they had sustained? Or did it mean that they should be paid a part of them—the principal value of the things lost, without compensation for the deprivation of the use? Would such part payment make a man whole? Would it be a satisfaction? Would a man who had been injured by the destruction of his cattle, or the burning of his house, be satisfied or indemnified by receiving, twenty years afterwards, the mere value of his property at the time it was destroyed? Was it no loss to be deprived of the use of his cattle during twenty years? Was there no damage in being deprived of the shelter of his house during the same period? To satisfy or make a man whole, under such circumstances, he must be paid immediately on the happening of the injury, so that, by using the money thus received, he can at once replace his cattle or rebuild his house; or, otherwise, he must be allowed damages for being deprived of the use of his cattle or the shelter of his house; and such damages are generally ascertained by computing interest, at the usual rate, on the value of the property from the time of the injury until payment is made to the owner. This, as has been stated already, is the rule of the law of nations; it is also the rule of the Supreme Court of the United States, and of the courts, as the committee believe, of every State in the Union. In support of this position, a host of authorities might be cited; but it is deemed unnecessary to multiply cases to sustain a usage believed to be nearly, if not quite, universal in reference to cases like the present.

It may be proper, however, to refer to the practice of our own government, and point out some of the cases in which interest, in addition to the value of the property injured or destroyed, has been claimed and allowed in behalf of our own citizens.

The United States, in the construction of their treaties, and in all their intercourse with other nations, have uniformly insisted upon and sanctioned the measure of redress decreed by the Florida judges in these cases, as affording the lowest measure of satisfaction for property taken or destroyed in violation of treaties, or of the laws and usages of nations.—(Vide opinion of Mr. Wirt, Attorney General, printed Opinions, pp. 568, 569, 570, 571; letter of Mr. Clay, Secretary of State, to Mr. Vaughan, British minister, of the 15th April, 1826; Wheaton's

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Life of Wm. Pinckney, pp. 196, 198, 265, (note,) 371; American State Papers, foreign relations, vol. 2, pp. 119, 120, 377, 388, 283; Ex. Doc. No. 32, 1st sess. 25th Congress, Ho. Reps., p. 249; Ex. Doc. Ho. Reps., 2d session 27th Congress, vol. 5, doc. 291, p. 50; American State Papers, foreign relations, vol. 4, p. 639; Elliott's Diplomatic Code, vol. 2, pp. 625, 605.)

These citations will show that interest, in addition to the value of the property illegally taken, was claimed and allowed under the 7th article of the treaty of 1794 with Great Britain, (8th Statutes at Large, p. 119;) under the word "losses," simply, in the 21st article of the treaty of 1795, with Spain, (8th Statutes at Large, p. 150;) under the words "just indemnification for private property carried away," in the convention of 1818, between the United States and Great Britain, (8th Statutes at Large, p. 249;) under the law of nations, by Brazil, without any treaty stipulations; under the words "injuries to property," the same words employed in the 9th article of the Florida treaty, in the convention of the 11th April, 1839, between the United States and Mexico, (8th Statutes at Large, p. 526;) under the 14th article of the treaty of 2d February, 1848, between the United States and Mexico, (records of the board of commissioners, on file in the State Department.) The indemnity in this case was paid by the United States to their own citizens in behalf of Mexico, in consideration of the cession of California and New Mexico.

These authorities also show that the United States, in their negotiations with other nations, have recognized no other rule of satisfaction for injury to property, in violation of the laws of nations, than that decreed by the Florida judges in these cases; and that whenever they have been able to obtain a treaty stipulation for "indemnification," for satisfaction for "losses," for satisfaction for "injury to property," or in any form of language implying compensation or satisfaction for injury to property in violation of treaty stipulations or of the laws of nations, they have uniformly claimed and received, or paid out of their own treasury, the same measure of satisfaction.

Under the treaty of Ghent, between the United States and Great Britain, a difference arose, which was referred to the arbitrament of the Emperor of Russia, who decided that the United States were entitled "to a just indemnification from Great Britain for all private property carried away by the British forces." The members of the joint commission, Messrs. Langdon Cheves and Jackson, differed as to the measure of damages. Mr. Cheves insisted on interest from the time of taking the property, in addition to its value, as the measure of damages. He said the claim was not for interest, *eo nomine*, but adopted as a mitigated rule of damages or compensation, founded on the pecuniary value of the property withheld; and that in such cases the common law and civil law both allowed reparation or compensation for *the loss of the use* of the property withheld from the commencement of the tortious detention. The rule of the public law, he said, was the same; and that, if the property captured and taken away in February, 1815, were returned now uninjured, it would not repair the loss sustained by the taking away and detention. The claimant would still be without indemnity for the *loss of the use* of his property for ten

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years, which was nearly equivalent to the original value of the principal thing. Mr. Wirt sustained the rule as stated by Mr. Cheves. (Opinions of Attorney General, vol. 1, p. 499, of May 17, 1826.) Mr. Clay, in a letter dated April 15, 1826, to the British minister, Mr. Vaughan, declared "that interest was a just component part of the indemnification which the convention stipulated." This rule was finally recognized by the British government, though the amount paid in gross was something less than the interest would have been if computed at the ordinary rate.

In the negotiations between the United States and Great Britain, in relation to the cases of the "Encomium" and "Comet," Mr. Stevenson, the American minister, under the instructions of the State Department, laid down the following propositions, which were fully admitted by Lord Palmerston. These propositions, it will be seen, relate to the measure of damages proper to be allowed for the taking and detention, or destruction of property, in several distinct points of view.

1. "That if a duty to be performed be not the payment of money, but the performance of some collateral act, that is the restitution of property, (other than money,) then, in lieu of interest, damages are awarded, and these damages, together with the property to be returned, are to constitute the indemnity of the sufferer for the loss he may have sustained by reason of the non-performance of this duty."

2. "That the measure of these damages will be the probable fruits or profits which might have been derived from the property or thing detained, during the period that the duty of restoring it was not performed."

3. "That if restitution of the property cannot be made, by reason of its loss, or from any other cause, then its value may be estimated in money, and this equivalent will stand in the place of the thing itself; and when reduced to a pecuniary standard, interest upon the equivalent is allowed in lieu of the fruits and profits, and flows, as in other cases of money not paid, as the necessary consequence of the non-performance of the duty of restitution."

4. "That, although under the laws of Great Britain and the United States, it is admitted that, in transactions between individuals, interest *eo nomine* would not be due on unliquidated demands of a nature purely and exclusively pecuniary, except from the period of their liquidation; yet it is equally true that, by those laws, when reparation is sought for loss of property, (in cases like the present,) the value of the property, together with an equivalent for the use of it, from the commencement of an illegal detention, *is always allowed.*"

5. "That these are principles sanctioned as well by the law of nations as those of the civil and common law, by the authority of precedents between Great Britain and the United States, a few leading references will satisfactorily show. To these the undersigned begs leave to refer Lord Palmerston."

Mr. Stevenson then cites Grotius, as cited in support of the Florida claims. Also, 2d vol. Campbell's Grotius, p. 360; vol. 6, sec. 1244. Cites Domat, to show that fruits and profits were allowed by the civil

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law as cited by Judge Bronson. Cites Pothier, Code Napoleon, Blackstone, Vesey's R., 2 Brown's C.C., and says:

"It (interest) has, moreover, *never been refused* in claims like the present, where a money equivalent has been substituted as a compensation for property wrongfully withheld, and for which the party had agreed to make reparation."

Mr. Stevenson then shows that interest was allowed under the 6th and 7th articles of Jay's treaty in 1794, and refers to the opinion of Sir John Nicoll, one of the British commissioners, under the 7th article of said treaty; also, to the decision of Sir William Scott, in the case of the "Acteon," cited by Judge Bronson, and proceeds to say that "the general doctrine, then, is, that he who withholds what he ought to return, does an injury for which he is bound to indemnify the sufferer; that the proper measure of indemnification is the thing which is withheld, together with its reasonable fruits or profits accruing during the period that it is withheld; that if, however, restitution of the property cannot be had, justice finds its compensation, or its value as an equivalent, and interest on it is resorted to as the best standard to ascertain the reasonable profits of money."

Having thus shown that the "satisfaction" stipulated in the treaty required that damages or interest for the detention of the property, or loss of its use, should be added to its original value, as well by the constant and uniform practice of our own government, as by the rules of the law of nations, and of the common and civil law, it follows as a necessary and unavoidable consequence, that it was the duty of the Secretary of the Treasury to pay the amounts awarded to the memorialists, and other claimants of the same class, by the Florida judges, in full, original value and interest. The memorialists, and all other claimants of the same class, had as just a right to the damages awarded by the judges for the loss of the use of the property which had been destroyed or carried away by our troops, as to the original value of the said property; and the injustice of refusing to pay the latter would have been in no respect greater than was the injustice of refusing to pay the former; and that damages for the injury done to the claimants by the loss of the use and enjoyment of the property, during the many years that elapsed before its original value was repaid, are, under the law and usages of nations, as well as by the rules of common and civil law, as much a part of the satisfaction contemplated by the treaty, as was the value of the property destroyed.

The sums due to these claimants, and awarded to them, as damages for the deprivation of the use of their property, have not been paid, solely in consequence of a decision of Mr. Woodbury, Secretary of the Treasury, made under a departmental usage in reference to domestic pecuniary demands.

That a treaty, being a contract between two independent nations, is to be controlled in its construction, not by the local usages of either, but by the universal rules of the international code, is too clear for argument. The committee believe that Mr. Woodbury would have taken this view of his duty in the premises, if it had been presented to his attention. While the decision of Mr. Woodbury has not been reversed, the right of these claimants under the treaty to the pay-

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ment of the awards of damage, under the name of interest, has not been denied by any Secretary of the Treasury who has acted upon the awards of the judges, or any Attorney General, since Mr. Woodbury's time, but has been expressly admitted by Secretaries Spencer, Bibb, Corwin, and Forward, and by Attorneys General Crittenden and Cushing.

The Court of Claims, in deciding upon the cases of the claimants, also seem to admit their rights under the treaty, although regarding them as without remedy under the acts of Congress passed to give effect to the treaty, construed as those acts are by the Court of Claims, so as to give the Secretary of the Treasury an unlimited power to revise and reduce awards made in favor of individuals by the Florida judges. And that there is no appeal from the Secretary of the Treasury to any judicial tribunal, is settled by the opinion of the Supreme Court of the United States.

The claimants are now, therefore, before the tribunal of Congress, which is uncontrolled by departmental usages or decisions, or by prior legislation, and which is now called upon to do justice, and cause the stipulations of the treaty of 1819 to be carried into effect.

If that treaty requires that the claimants should be indemnified for the loss of the use of their property, as well as for the loss of the original value of their property, the duty of this government to make such indemnification is not impaired by the erroneous and inadvertent decision of one of its executive officers. This government can never set up against the reclamations of Spain an adjudication by the Treasury Department, manifestly in violation of the law of nations. In the case of the United States *vs.* The Schooner Peggy, 1 Cranch. 103, Chief Justice Marshall, in confirmation of this principle, said: "Whatever the decision of the court may be, *the claim upon the nation, if unsatisfied, may still be asserted.*"

It has been much controverted, in the history of these cases, whether the decisions of the Florida judges were judicial and final; and if not, to what extent a revising power was intended to be conferred upon the Secretary of the Treasury, by the acts of Congress relating to the subject. The committee have not regarded it as necessary to enter into these controversies. It is sufficient that the original value of the property belonging to the claimants, for the destruction of which they are entitled to indemnity, has been settled by tribunals to which that duty was assigned by this government; that that original value has been admitted and paid at the treasury, after a careful revisal, with a deduction so slight that the substantial correctness of the decisions in Florida is not impeached, and that the only question which now remains relates to the duty of indemnifying the claimants for the loss of the use of their property. This duty, independently of the decisions of the Florida judges, your committee, for the reasons hereinbefore given, regard as entirely clear.

The amount to be paid, if the views of the committee are correct, is large; but this cannot alter their substantial justice nor discharge the duty. If it is unjust, and in violation of the national faith, to withhold the payment, the magnitude and evil consequences of this injustice and violation of national faith, and the hardships which result

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from them to individuals, are augmented in precise proportion to the amount withheld.

It is the interest of the United States, as a commercial nation, with property exposed to violence in every part of the world, to resist any change or relaxation of the rule of public law, which prescribes, as the measure of indemnification for injuries to property, the restoration of its original value, together with compensation for the loss of its use. This government, which has always heretofore insisted upon this rule, cannot insist upon it hereafter, as against others, if it shall finally decline to act upon the rule in these cases.

The committee, therefore, report a bill, requiring the payment of that portion of the damages awarded by the judges, under the name of interest, so far as the original value awarded by the said judges has been approved at the Treasury Department, and recommend its passage.

The committee also append the argument of Mr. Webster in relation to the validity of these claims for interest, under the treaty of 1819, and the acts of Congress of 1823 and of 1834.

B.

Opinion of the Hon. Daniel Webster on the Florida claims arising under the ninth article of the treaty of 1819, *between the United States and Spain.*

The questions propounded by Mr. Secretary Walker, upon which the following opinion of Mr. Webster was given, are as follows:

1. "Whether the provisions of the treaty require the losses or injuries for which satisfaction is provided, to be established judicially? And if so, whether decrees of the judges as to the amount or extent of said losses or injuries—as to cases within the provisions of the treaty—are final?

2. "Whether the measure or rate of satisfaction adopted and applied by the judges in these cases, namely, to add to the value of the property, at the time of its loss, interest as a compensation for the loss or deprivation of its use, is or is not in accordance with the laws and usages of nations, as the proper rule of redress for such injuries, and can be allowed and paid by this Department under the acts of Congress applicable to this subject?"

OPINION.

It appears to me that great misconception has prevailed respecting the true construction of the ninth article of the treaty with Spain of 1819, and of the two acts of Congress passed for the purpose of carrying the provisions of that article into effect.

Before the date of the treaty, and while Florida yet belonged to Spain, that is to say, in the years 1812, 1813, and 1818, inroads were made in Florida by certain troops of the United States, and injuries and excesses committed on the inhabitants.

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Although Spain was now about to cede the whole territory to the United States, yet her Government felt it to be its duty to cause a stipulation to be contained in the treaty of cession providing satisfaction for these injuries, and full indemnification for the sufferers.

Instead of a joint commission, or mutual arbitration, to ascertain these injuries, and adjudge the proper compensation, the contracting parties agreed that this duty should be performed by a judicial tribunal. There was good reason for this. The injuries were local. They were committed on the property, real and personal, of the inhabitants. The parties were all in Florida, and the proofs all in Florida. Judicial courts were now about to be established in Florida, under the authority of the United States; and nothing could be more just or expedient, than that to these courts, sitting in the Territory, should be assigned the duty of inquiring into these cases, and establishing the right and the amount of indemnification where such right was proved. The ninth article of the treaty provided, therefore, that "The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida."

At the commencement of any discussion of the questions arising in this case, some propositions must be received and admitted as undoubted truths.

I. The first is, that a treaty is the supreme law of the land. It can neither be limited, nor restrained, nor modified, nor altered. It stands on the ground of national contract, and is declared by the Constitution to be the supreme law of the land; and this gives it a character higher than any act of ordinary legislation. It enjoys an immunity from the operation and effects of all such legislation.

From this acknowledged truth, there results a rule of construction, of very great importance, and which is to be applied to all laws passed for the professed purpose of carrying treaty stipulations into effect; and that is, that such laws must be so construed as to conform to the provisions of the treaty, and give them full effect, and not so as to thwart those provisions and embarrass their operation and application by imposing new limitations or conditions, or by any other means. The advantages secured by a treaty stipulation to those for whose benefit it was entered into, cannot be abridged or curtailed by any law passed for executing the treaty. The treaty and the law must be made to stand together, where they can and so far as they can; and if, after all, there be found an irreconcilable inconsistency, the law must give way to the treaty.

II. A second general proposition, equally certain and well established, is, that the terms and the language used in a treaty, are always to be interpreted according to the laws of nations, and not according to any municipal code. This rule is of universal application. When two nations speak to each other, they use the language of nations. Their intercourse is regulated, and their mutual agreements and obligations are to be interpreted by that code only, which we usually denominate the public law of the world. This public law is not one thing at Rome, another at London, and a third at Wash-

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ington. It is the same in all civilized States; everywhere speaking with the same voice and the same authority.

Guided by these elementary rules, let us examine the treaty and the laws.

The words of the treaty are plain: "The United States will cause satisfaction to be made for the injuries, if any, which, by process of law, shall be established to have been suffered by the Spanish officers, and individual Spanish inhabitants, by the late operations of the American army in Florida."

The terms "process of law" are the terms usually employed to describe judicial proceedings. They are exactly equivalent to the phrase "due course of law," or judgment of law.

They imply parties, a case, a hearing, a trial, and a judgment, or decision. This is their interpretation in every book of authority from Magna Charta down; and it is precisely the sense in which the words are used in the fifth article of the amendments to the Constitution of the United States. In that article it is declared that "no person shall be deprived of life, liberty, or property without due process of law." That is, without hearing, trial, and regular judgment.

"Process of law," as the words are used in the treaty, mean any kind of judicial proceedings, suited to the case. It may be common law process, equity process, or admiralty process, as the case may require. But whatever be the particular form of the proceeding, it must be a judicial proceeding; a proceeding which involves a hearing, a trial, and a judgment.

The treaty acknowledges that there are, or may be, persons who have suffered injuries, by the operations of the American army in Florida; and it promises satisfaction, to all such persons, when those injuries shall have been established by process of law.

To establish an injury by process of law, is to prove that injury before some competent judicial tribunal; to cause its character, and its amount, to be ascertained and fixed, and judgment thereon pronounced and declared. And this judgment, supposing it always to be rendered by a judicial tribunal acting within its jurisdiction, cannot be vacated, annulled, reversed, or altered, except by some higher appellate power, itself proceeding, also, by due process of law.

Two consequences follow from these premises:

I. No one can claim any compensation, or satisfaction, under this clause of the treaty, who cannot establish the fact of an injury, and fix its amount, by regular judicial proceeding and judgment.

II. Any one who has established the fact of an injury, and the just measure of satisfaction, by regular legal proceedings and judgment, cannot be deprived of that satisfaction, or any part of it, by the super-induced authority of a mere executive officer, or political functionary.

That would be in the very teeth of the treaty. It might just as well be said, that under this clause, an executive officer, or a political functionary, might be authorized to decide on the case of an alleged injury, and the satisfaction justly due, if any, originally, and in the first instance, without any reference whatever to a hearing, trial, or judgment by process of law. For if that which the treaty says shall be "established by process of law" may be enlarged, diminished,

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changed, or altered by the mere discretion of an individual, then it is evident, this particular provision of the treaty becomes a dead letter; and the whole clause means no more, than that satisfaction shall be made for injuries, in any way that the government may see fit to provide; and that all cases may be disposed of, by executive agents or officers, without hearing, trial, or judgment, if they so see fit; in other words, without "process of law."

The mode of ascertaining and establishing the injury is as much a part of the treaty as the obligation to make satisfaction for it. It is an important, essential, substantial part of the stipulation. It would be no more a violation of good faith, on the part of the Government of the United States, to refuse to make any satisfaction at all, than it would to refuse that particular satisfaction which it has promised by the treaty. The parties in interest, have a right to demand, that they shall have an opportunity of establishing the injuries done them, and seeking satisfaction for those injuries, in the mode expressly stipulated in the treaty; and to reject that mode, and to adopt another, without their consent, would be a flagrant injustice, and an outrage on public faith. All this appears to me to be too plain to require further discussion.

If any authority be required to show the settled meaning of the terms "process of law," reference may be had to 3d Story's Commentaries on the Constitution, sections 1782–83, pages 660, 661. 2d Kent's Commentaries, 6th edition, pages 12, 13, note b. Baldwin's Views, page 137. Tucker's Blackstone, vol. 1, part 1, appendix, p. 203. Taylor *vs.* Porter and Ford, 4 Hill's New York Reps. p. 140. 19 Wendall's Rep. p. 676.

We come next to consider the acts which have been passed by Congress for carrying this part of the treaty into effect.

The first act was passed on the 3d day of March, 1823. The second on the 26th of June, 1834.

These acts, with their titles, are set forth and recited in the case.

These acts, or laws, were enacted in *pari materia;* the latter refers to the former, and extends its provisions. They are, therefore, to be considered together, and such a construction if practicable, given to them, as shall produce a harmonious result. And, I have already said, that they must be so construed as to carry the treaty, in its plain and just sense, into full and complete operation; not so as to modify or alter it; not so as to embarrass and hamper its provisions; not so as to deprive the parties interested in its provisions of any of the advantages or benefits intended for them.

The principal difficulty arises from the second section of the first act; the words of which, are:

"That, in all cases in which said judges shall decide in favor of the claimants, the decisions, with the evidence on which they are founded, shall be by the said judges, reported to the Secretary of the Treasury, who, on being satisfied that the same is (are) just and equitable, within the provisions of the said treaty, shall pay the amount thereof, to the person or persons in whose favor the same is adjudged, out of any money in the Treasury not otherwise appropriated."

According to the case stated, it would appear that, under the supposed authority of this section, the Secretary assumed and exercised a

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full appellate power over the judgments and decrees of the courts, reëxamining the decrees on their general merits, and on the whole evidence, and reducing and altering them at his own unlimited discretion; and, especially, that he struck out interest in all cases in which the courts had allowed it, as being no just part of the satisfaction intended by the treaty.

Such a construction of this section as would confer this power on the Secretary of the Treasury cannot be received and enforced, in my judgment, without overturning the plainest principles of constitutional and public law. If the section cannot be made to bear another construction, then it must be wholly rejected as being inconsistent with the treaty; and, therefore, repugnant to the Constitution of the United States.

By the treaty, the injury of the suffering party is to be *established* by process of law. It is absurd to say that this provision would be satisfied by a decision of the Secretary of the Treasury. Such a decision is no process of law.

But there is a construction which may be given to this second section, without violence, which will make it sensible, proper, and quite consistent with that clause of the treaty which it was the object of the whole act to carry into effect.

The courts before whom these claims were brought were courts of limited jurisdiction. They were courts, they were judicial tribunals; their proceedings were by process of law. Nevertheless, they were tribunals of a specific and limited, and not of a general jurisdiction.

The act of Congress declared, in the first section:

"That the judges of the superior courts, established at St. Augustine and Pensacola, in the Territory of Florida, respectively, shall be, and they are hereby, authorized and directed to receive and *adjust* all claims arising within their respective jurisdictions, of the inhabitants of said territory, or their representatives, agreeably to the provisions of the ninth article of the treaty with Spain, by which the said territory was ceded to the United States."

I may remark, in passing, that the word "adjust" in this section is either a clerical error for "adjudge," or, if the word were really "adjust," the meaning evidently was the same as "adjudge;" because, in the following section, the act says that the Secretary of the Treasury, on being satisfied, &c., shall pay the amount thereof to the person or persons in whose favor the same is "*adjudged*."

I may remark, further, that it is quite frivolous to contend that the treaty required a judicial trial only for the purpose of proving the fact of injury, and that the amount of satisfaction may still be left to be fixed by an executive officer. To establish an injury or wrong, done by one party and suffered by another, by process of law, is to ascertain and fix the amount of the injury, as well as the fact of its having been committed. No other sense can be given to the word; and so Congress understood it, for the law provides that the courts shall receive and adjust (adjudge) the claims, and decide thereon, and that the *amount* by them *adjudged*, the Secretary of the Treasury being satisfied, &c., shall be paid out of any money in the treasury not otherwise appropriated; so that the whole question comes again to this: What is the

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extent of authority which the second section of the act gave, or could give, to the Secretary of the Treasury over the decrees or judgments of the courts?

These courts, as I have said, were courts of limited jurisdiction; but, like other such courts, they must judge for themselves, in the first instance, of the extent of their own jurisdiction. When a case is brought before them, they must decide whether it is a case to which their authority extends; and, as they decide this necessarily preliminary question, so they will, or will not, proceed to hear and decide the cause.

But their decision on the extent of their own jurisdiction may be inquired into and examined: First, by a court of appellate jurisdiction, if any such be established by law. Second, by any party called to act on the case, and whose duty it is to carry all lawful decisions of the court into execution. In such a case it is evident that the party acts at his peril, and he can judge of nothing but the very question of jurisdiction.

If a sheriff be called on to serve process, he may, for his own safety, inquire whether the court from which the process issued had jurisdiction in the case, so as that he will be justified in obeying its orders; but he cannot inquire into the correctness of the judgment on which the process issued. So, if an officer be required to collect a tax, he must first know, or be able to see, whether the tax has been levied or assessed by competent authority.

If a disbursing officer be required to pay money, he must, in like manner, take care to be satisfied that the authority requiring the payment was competent to make the requisition; but he cannot judge of the merits or demerits of the claim on which the allowance was made, and payment demanded, if it be the case of a private claim, nor of the propriety or impropriety of the decision, if the case be of a public nature. It is enough for him to see that the command comes from lawful authority, and he needs to look no further.

Now this, I suppose, is the whole authority which the act of Congress intended to give, as it is most clearly all that it could give, to the Secretary of the Treasury in regard to the judgments of these courts. The phraseology, it is true, is not very accurate. The words are, that the Secretary of the Treasury, on being satisfied that the decision of the court is "just and equitable, within the provisions of the treaty," shall pay the amount thereof.

This I understand to mean no more than if the words had been, that the Secretary of the Treasury, on being satisfied that the decision is justly and equitably within the treaty, shall pay the amount.

To be "justly and equitably" within the treaty, is to be within the treaty. And if the Secretary of the Treasury finds, on looking at the proceedings, that the case was one within the treaty; that is, that it was the case of an injury committed in Florida, on Spanish officers or individual Spanish inhabitants, by the army of the United States, then he is to pay the amount adjudged.

This, in my opinion, is the entire extent of his authority of supervision. He has no right whatever to open the judgment, examine the merits of the case, weigh the evidence, and reform the judicial decision. It is preposterous to say that, when the Secretary of the

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Treasury exercises this supposed power, and reverses the judgment of the courts, the injury of the party complaining has been "*established*" by "process of law," according to the solemn stipulations of the treaty.

I see nothing in the second act materially affecting the remarks which I have made on the first. That act had two objects, connected with one subject.

The court in East Florida had allowed certain claims for depredations committed as early as in the years 1812 and 1813, and other claims of the same description were known to exist. The Secretary of the Treasury had rejected or reversed all judgments founded on such claims, they not being, in his opinion, within the treaty.

The act of 1834, provides that the amount of the judgments in these cases, already rendered, should be paid as judgments in other cases; and that claims of this class, not as yet decided and adjudged, should be received, examined, and adjudged in like manner as the cases arising in 1818, and subject to provisos which confirm, strongly, the view I have taken of the first act.

The evident object, and all the object, of the act of 1834, was to place claims for injuries in 1812 and 1813 on the same footing with those for like injuries in 1818.

This act was passed, not as making any new or independent provision for claims, but simply for the purpose of declaring the sense of Congress, that the injuries committed in the years 1812 and 1813 are within the treaty, confirming thus, the opinion of the court, and reversing that of the Secretary of the Treasury. This point is therefore now settled.

It appears that the Secretary of the Treasury, in the exercise of his supposed or assumed appellate power, struck out interest in all cases in which it formed a part of the amount adjudged by the court. If the opinions already expressed be well founded, the Secretary could lawfully exercise no such power. The courts adopted, and had a right to adopt, their own rule for assessing damages and awarding amounts in the cases before them. If they saw fit to allow interest, it was an exercise of their judicial power with which the Secretary could not interfere.

In such a case, the claim for interest was *established by process of law*, as much as the claim for the original injury. It was *res judica*. It had become a judgment of a competent, and the only competent, tribunal; and the Secretary could not disturb it, by rejecting any part, any more than by overthrowing the whole. But as this is an important question, I propose to consider it on principle, and independent of the judicial decision in a particular case.

A vague notion has been prevalent, and the expression of it has often been repeated, that the government of the United States never pays interest. This is not at all correct, in point of fact. Interest has been allowed to claimants by the acts of Congress in almost innumerable instances.

But if such a rule did exist, it would not effect this case in the slightest degree. Nothing more can be understood from any such rule, than that in matters of account, or on deferred debts, claims, or

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demands, the Treasury Department does not allow interest. This proceeds on the presumption that accounts will be promptly rendered, and all claims and debts presented and paid when due.

But in cases, such as I am now considering, interest is allowed, not as interest in its ordinary sense, that is to say, as augmentation, running and growing on a fixed sum. It is regarded merely as a part or element in the loss or injury, or as a just mode of fixing the amount of damages.

An individual has suffered a wrong, a loss and injury inflicted on his property, for which the government is liable, and for which it feels bound to provide him redress. But that redress cannot, in many cases, be instantaneous or immediate. Before it can be possibly obtained in the appointed course, much time is consumed, much personal attention demanded, and often heavy expenses incurred. These are all direct and immediate consequences of the original loss or injury; they form a part of it, and in all justice and equity enhance the just claim for indemnity.

Different tribunals deal with these portions of the loss and injury, in different ways, all of them being reasonable in themselves. One thinks it just to make specific allowances for the loss of use of capital, and for time, expenses, and charges; another, as a simple mode, makes one allowance to cover them all, under the name of interest, and adds this to the amount of the original loss, as proved; a third combines all parts of the compensation together, forms one aggregate, and awards a round sum, or sum in gross for the whole. It is in the discretion of any tribunal, called on to make satisfaction for a loss or an injury, to adopt either of these modes.

But the importance of this question calls on me to go further; and I maintain that it was the bounden duty of the courts to add interest, in these cases, to the original amount of loss proved. They could not escape from this duty, without a manifest departure from principle.

We are now construing a treaty, a solemn compact between nations. This compact between nations, this treaty, is to be construed and interpreted throughout its whole length and breadth, in its general provisions, and in all its details, in every phrase, sentence, word, and syllable in it, by the settled rules of the law of nations. No municipal code can touch it, no local municipal law affect it, no practice of an administrative department come near it. Over all its terms, over all its doubts, over all its ambiguities, if it have any, the law of nations "sits arbitress."

The treaty, in this 9th clause, speaks of satisfaction to be made for injuries; and injuries which had been committed by violence, by armed men, acting without right, and without authority. And I maintain that there is, in the code of national law, a fixed and settled rule, founded in reason, and established by the highest authorities, by which satisfaction for such injuries is to be ascertained and adjudged.

This rule is laid down by Rutherforth, in these terms:

"In estimating the damages which any one has sustained, when such things as he has a perfect right to, are unjustly taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that

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might have arisen from it. He who is the owner of the thing, is likewise the owner of such fruits or profits. So that it is as properly a damage to be deprived of them, as it is to be deprived of the thing itself."—Lib. 1, chap. 17, sec. 5.

The language of Grotius is:

"The loss or diminution of any one's possessions is not confined to injuries done the substance alone of the property, but includes everything affecting the produce of it, whether it has been gathered or not. If the owner himself had reaped it, the necessary expense of reaping, or of improving the property to raise a produce, must also be taken into the account of the loss, and form part of the damages."—Campbell's Grotius, vol. 2, pages 195, 196. Lib. 2, chap. 17, sec. 4.

In laying down the rule *for the satisfaction of injuries,* in the case of reprisals, in making which the strictest caution is enjoined not to transcend the clearest rules of justice, Mr. Wheaton, in his book on national law, says:

"If a nation has taken possession of what belongs to another, if it refuses to pay a debt, to repair an injury, or to give adequate satisfaction for it, the latter may seize something of the former, and apply it to its own advantage, till it obtains payment of what is due, together WITH INTEREST AND DAMAGES."—Wheaton on International Law, page 341.

Mr. Wheaton, in the above passage, has copied, and hardly varied the text of Vattel.—Lib. 2, chap. 18, sec. 342.

To avoid trouble and detail in ascertaining the actual amount of damages or injury, resulting from the loss of the fruit, or profit of the thing lost, or destroyed, the modern practice of nations, when making compensation for losses and injuries by joint commissions, as well as the daily practice of courts sitting under the law of nations, is to allow interest, at the legal rate, as a compensation for the loss of fruits and profits, as a substitution for an actual and detailed account of such fruits and profits.

[That the prize courts are governed by the laws of nations, see Kent's Com., 5th edition, pages 68, 69, 70; 9 Cranch, 191, 244.]

The Supreme Court of the United States uniformly holds the same doctrine:

"The prime cost or value of the property lost, and, in cases of injury, the diminution in value by reason of the injury, *with interest thereon,* affords the true rule for estimating damages in such cases."—3 Wheaton, page 546—The Amiable Nancy.

See, also, 1 Gallison's, 315, to the same point, case of the Lively.

The rule is exactly the same in the English courts, sitting under the law of nations.—2 Dobson, page 84.

It now only remains to be added, that the government of the United States, in its intercourse with foreign nations, and in demanding at their hands reparation for injuries, has not only recognized the principle, and the rule, as above stated, but has affirmed them, with emphasis, and insisted on their application in all cases. It will hardly be thought necessary to go through our whole history, to collect cases to this point. I content myself with calling attention to one of the most conspicuous, and which it is quite impossible to distinguish, in

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point of principle, from the cases provided for in the 9th clause of the treaty of 1819, which I am now considering.

A question arose, under the convention of St. Petersburg, between the United States and Great Britain, respecting property alleged to have been carried away by the British forces, at the close of the last war with England, in contravention of the stipulations contained in the treaty of Ghent. Great Britain admitted the carrying away, but denied that it was any infraction of the treaty. The question in difference was submitted to the arbitration of the Emperor of Russia, and he made an award in these terms:

"The United States of America are entitled to a just indemnification from Great Britain for all private property carried away by the British forces."

For the purpose of carrying this award into effect, a joint commission was instituted to sit at Washington, the American commissioner being Mr. Langdon Cheves, and the British commission, Mr. George Jackson. They differed on the question of interest. In the end, the matter was compromised, by the payment, on the part of Great Britain, of a gross sum, which was distributed by the government of the United States, first, in paying off the principal of each claim, and secondly, for paying interest on the several claims, so far as the residue of the sum received would extend.

The claim of the government of the United States was clearly and ably set forth by the American commissioner, Mr. Cheves; and to avoid length, and repetition, I append to this opinion extracts from his remarks.—(See Appendix.)

The treaty between the United States and Mexico, of the 11th of April, 1839, provided for the institution of a joint commission for ascertaining and determining the claims arising from injuries to the persons and property of the citizens of the United States by Mexican authorities.

The 1st and 5th articles of the treaty provided as follows:

"ARTICLE 1. That all claims of citizens of the United States should be referred to a joint board of commissioners, who should be sworn impartially to examine and decide upon said claims."

"ARTICLE 5. That the said commissioners shall, by a report under their hands and seals, decide upon the justice of the said claims, and the amount of compensation, if any, due from the Mexican government in each case."

These articles contain all the provisions of the treaty, respecting the duties and powers of the commissioners.

The act of Congress of 12th June, 1840, "to carry into effect" said treaty, provided for the appointment of two commissioners on the part of the United States, who, with two others on the part of Mexico, "shall form a board, whose duty it shall be to receive and examine all claims provided for by the convention, and to decide thereon according to the provisions of the said convention and the principles of justice, equity, and the laws of nations."

The American commissioners, Mr. Marcy and Mr. Rowan, (and afterwards Mr. Marcy and Mr. Breckenridge,) allowed interest (at the same rate as was allowed by the Florida judges in their decrees) in all

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cases of injuries arising from loss or destruction of property; and the umpire, Baron Roenne, allowed the interest, in all cases. Indeed, it is not understood that the Mexican commissioners objected to such allowance.

I append to this opinion one other paper, which contains an opinion of the Attorney General of the United States on a private claim. It is the case of Mrs. O'Sullivan, and may be found at page 1115 of the opinions of the Attorneys General.

The rule of damages, adopted by the courts in Florida, was laid down by Judge Reid, in the first decision awarding interest, in these words, viz:

"I am required by the statute to receive, examine, and *adjudge* these claims for losses. In performing this duty I have allowed, because it seemed to me just and equitable to allow it, *interest* upon the amount or value of property ascertained to have been lost. The rate of interest existing in the province at that time (1812 and 1813) was five per cent., and this is the sum allowed in all cases. I am sensible that this allowance will swell considerably the amount to be paid to the claimants, but I do not perceive how it could be avoided. If we lose sight of the national character of one of the parties, and suppose two private persons engaged in a dispute about an injury to property, the tribunal to which resort is had, in adjusting the damages due by the one to the other, will consider the value of the property destroyed, in connection with the time for which the owner has been deprived of the use and enjoyment of his property. The first being ascertained in money, a compensation for the last may best be regulated by reverting to the rate of interest allowed by the law of the country where the wrong was done."

If the opinions which I have expressed, and attempted to support, are sound and well founded, then this rule, adopted by the courts, is exactly the rule which they were bound to adopt, and the only rule which they could adopt, without manifest disregard of the principles of public law.

It may, probably, be thought, that some of the opinions which I have expressed in this paper are more or less in conflict with opinions which have been given, in these cases, by recent Attorneys General of the United States, Mr. Crittenden, Mr. Legaré, and Mr. Nelson. Perhaps, however, the differences may be rather apparent than real, as the questions appear to have been submitted, and their opinions given, without particular reference to the terms of the treaty, or those authorities of public law which, in my judgment, rule the case. On the whole, I am prepared to answer the questions proposed to me; and my opinion clearly is:

I. That the provisions of the treaty require the losses or injuries for which satisfaction is provided, to be established judicially; and that the decrees of the judges as to the amount or extent of said losses or injuries, as to cases within the treaty, are final.

II. That the measure or rule of satisfaction adopted and applied by the judges in these cases, namely, to add to the value of the property at the time of its loss, interest, as a compensation for the loss or deprivation of its use, or as covering the necessary and immediate conse-

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quences of the original injury, is in accordance with the laws and usages of nations, and ought, undoubtedly, to be allowed and paid by the Secretary of the Treasury, under the acts of Congress already cited.

DANIEL WEBSTER.

APRIL 6, 1849.

APPENDIX.

Extracts from the remarks of the American Commissioner, Mr. Langdon Cheves, referred to on page 24, of the foregoing.

In his opening paper, under date of February 25, 1825, he states the rule of indemnification or satisfaction for injuries suffered thus:

"The property of which he (the claimant) claims the equivalent, belonged to him. It has been decided that it ought not to have been taken from him; it has been proved that it was taken from him as far back as the 17th February, 1815, and it has been agreed that he is to be compensated for the injury he sustained.

"The injury is the cause and the measure of his compensation. The only inquiry then is, the extent of that injury. The extent of the injury is equivalent to the pecuniary value of the property *at the time he was deprived of it*, and the value of the sum of money of which he was deprived during the period of its detention."

Again, he says: "Indemnification means a reimbursement of a loss sustained. If the property taken away on the 17th February, 1815, were returned now, uninjured, it would not reimburse the loss sustained by the taking away and consequent detention—it would not be an indemnification. The claimant would still be unindemnified for the loss *of the use* of his property for the ten years, which, considered as money, is nearly equivalent to the original value of the principal thing. So, in substituting a pecuniary value for the thing, unless interest is allowed for the use of the money, the claimant will remain unindemnified."

Again, in the same paper: "He who deprives another of the *use* of his property does him as great an injustice, in principal if not in degree, as he who deprives him finally and forever of it, and justice equally requires that he should indemnify him for the loss of its *use* as for the loss of the principal thing. Unless it can be truly averred that one may deprive another of the *use* of his property for a given time, and if he finally return it uninjured in its indentity, not be bound in justice to compensate him for the loss of its *use*, it is conceived it cannot be truly asserted that interest does not follow the principal."

Again: "If interest be an incident usually attendant on the delay of payment of debts, damages are equally an incident attending on the withholding an article of property; and where they are rendered in the shape of damages, they are usually given with a liberal and sometimes an unsparing hand. It is, then, a *mitigation* of the usual incident of

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damages for the detention of property, to establish a fixed and equitable rate of interest as the equivalent."

"There is no doubt that this is the leading reason why boards of commissioners, sitting as the representatives of nations, have so generally made interest the rule of damages, instead of a capricious discretion, which would, perhaps, often become an unjust and vindictive assessment of them."

Again: "The claim is not of interest *eo nomine*. It is adopted as a *mitigated* rule of damages, compensation, or indemnification, founded on the estimated pecuniary value of the article withheld. In that case, the common law and the civil law are both clear in allowing reparation of the loss of the *use* of the thing withheld, from the commencement of the tortious detention. The rule of the *public law* is the same."

Case of Mrs. O'Sullivan, and opinion of Attorney General, referred to on page 25, of the foregoing.

This was a claim growing out of the seizure of a ship and cargo by a political agent of the United States.

Congress passed an act providing "that the Secretary of the Treasury be, and he is hereby, authorized and directed to cause the claim of Mary O'Sullivan, widow and executrix of John O'Sullivan, deceased, to be examined by the accounting officers of the treasury; and that there be allowed and paid to the said Mary O'Sullivan, out of any money, &c., the amount of the actual loss which may be shown, to the satisfaction of the Secretary of the Treasury, to have been sustained by the said John O'Sullivan, in consequence of the act of the late John M. Forbes, commercial and political agent of the United States of America, at Buenos Ayres, in detaining the vessel of the said John O'Sullivan, in the year 1823, and causing her to be sent to the United States."

This act required payment of the amount of the "actual loss" as shown to the satisfaction of the Secretary of the Treasury. The case was referred to the Attorney General Butler, as to the proper rules to be adopted in ascertaining "the actual loss," and whether the claimant "was entitled, within the terms and intention of the act, to compensation for the *deprivation of the use* of the vessel during her detention?" And, "whether that was not a constructive and consequential, and not an *actual loss?*"

Mr. Butler, after an elaborate examination of the authorities, deduced a rule from the decisions of the federal courts, where *interest* upon the original value, by way of damages for the loss of the *use*, in addition to such original value, had been allowed as the measure of the actual loss; in every one of which cases he says, "Congress passed acts indemnifying the officer to the full extent of the recovery against him," citing "Laws U. S., 4 vol. p. 91; 3 vol. 369; 6 vol. 282; 7 vol. 259."

"The adjudged cases," he says, "in which recoveries have been had against officers acting in good faith, and in which Congress afterwards

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made provision for indemnifying the officer, may, therefore, with great propriety, be referred to, for the purpose of ascertaining the manner in which the rule is carried into effect."

He further says: "I cannot agree that the loss of the *use* of the vessel was merely a *consequential loss;* still less than it was constructive and not actual. It appears to me, that the loss of the beneficial *use* of the vessel, was the direct and immediate effect of the interference of Mr. Forbes. But even if this is to be regarded as a *consequential loss*, it will not, therefore, follow that it is not an actual loss, in strict propriety of language, and within the meaning of the law. A loss may be actual, positive, and real, and may be traced with certainty to a particular cause. The distinction between *immediate* and *consequential* damages is a familiar one in commercial law; it is the foundation of the distinction between the action of trespass, and that of trespass on the case; the former of these actions being brought where the damage is immediate, and the latter where it is only consequential.

"In each case, however, *actual* damage is the subject of the suit, and must be proved to sustain it."

Mr. Butler concludes that, "it is obvious that the difference in the *value* of the vessel is not the whole loss sustained; the beneficial *use* of the vessel is also lost to the party during the whole period of the detention; and for this loss, interest on the prime value is but the *lowest rate* of indemnification."

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 94.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1860.—Ordered to be printed.

Mr. NICHOLSON made the following

REPORT.

[To accompany Bill S. 231.]

The Committee on Revolutionary Claims, to whom was referred the memorial of the State of Georgia for the repayment of certain moneys paid to Peter Trezvant, submit the following report thereon:

It appears that the State of Georgia, by an act passed on the 25th of December, anno Domini 1847, admitted and provided for the payment of the claim of Peter Trezvant, the legal representative of Robert Farquhar for the principal, excluding interest, of certificates of indebtedness, issued to the legal representative of said Farquhar in 1794.

The indebtedness originated in supplies of clothing purchased for the use of troops, under General James Jackson, in 1777, by commissioners of Georgia, of Robert Farquhar, then a merchant of Charleston, South Carolina. A suit was brought for the amount of the claim in 1787, and a verdict rendered for the plaintiff. In 1793, the legislature of Georgia, by resolution, pledged the faith of the State that the claim should be paid, so far as it should be found to be well founded.

In 1794, it was audited by the auditing officers of the State, and certificates of indebtedness issued.

Peter Trezvant, who married the only child of Robert Farquhar, appears to have been a resident of Great Britain in 1838, when he petitioned Georgia for the payment of these certificates.

In 1847, after a full consideration of nine years, and after instituting a special commission to investigate it, the State of Georgia could discover no ground of law, or fact, upon which to refuse the payment of the claim.

And your committee are equally unable to see upon what ground it could have been refused.

The case is, therefore, the plain one of the duty of the national government to assume the payment of the expenses of the general military defense. The revolutionary war debts of all the States were assumed upon this principle, in 1790, and its correctness is not now open to question.

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In satisfaction of this claim, the State of Georgia issued her bonds, dated January 1, 1848, payable in ten years, with annual interest: forty-four bonds of five hundred dollars each, and one bond of two hundred and two dollars and twenty-two cents, being in all for the sum of twenty-two thousand, two hundred and twenty-two dollars and twenty-two cents.

Tne payments upon these bonds, on and prior to the 1st day of January, 1858, amounted to thirty-five thousand, five hundred and fifty-five dollars and forty-two cents.

Your committee report the accompanying bill, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 29, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 232.]

The Committee on Pensions, to whom was referred the petition of Frederick L. Colclaser, for an invalid pension, beg leave to report:

That it appears from the rolls of the War Department the petitioner enlisted on the 20th December, 1838, for five years, and was discharged on the 2d November, 1843, by reënlistment for five years, and was discharged 26th October, 1846, on surgeon's certificate of ordinary disability, for the reason that "he is afflicted with ventral hernia."

The petitioner states that in July, 1846, while in the line of his duty, procuring water, he was injured by a portion of the bank of the river falling on him; and that he was informed by his superior officer, Major Staniford, that he would be discharged upon "certificate for pension," but that he was not so discharged; that he was unable to obtain evidence from his officers until he ascertained where Major Deas was stationed, and therefore the delay in making his application for a pension.

His statement is corroborated by Major Deas, United States army, who certifies that the petitioner "is clearly entitled to a pension from the date he received the injury."

The committee, therefore, report a bill for his relief.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 29, 1860.—Ordered to be printed.

Mr. WILKINSON made the following

REPORT.

[To accompany Bill S. 233.]

The Committee on Pensions, to whom was referred the petition of Alice Hunt, widow of Thomas Hunt, beg leave to report:

That it appears, from the records of the War Department, Thomas Hunt, husband of petitioner, was appointed a third lieutenant, fourth infantry, 6th May, 1813; second lieutenant, March, 1814; retained, 15th May, 1815, in eighth infantry; transferred, January, 1816, to fifth infantry; first lieutenant, July, 1817; assistant commissary, March, 1819; captain, September, 1824; resigned, 31st October, 1836; died, Detroit, Michigan, 16th February, 1838.

The petitioner prays a pension, on the ground that her husband's death was caused by reason of disease contracted while in the line of his duty, in the service of the United States.

It appears that the husband of petitioner was made prisoner at Detroit, in 1812; was taken to Montreal; and that the hardships and exposures to which he was then subjected, made him violently ill, and permanently affected his constitution; that in 1813, from exposure to the weather in an inclement season, in the discharge of his duty, "he contracted inflammation in his right knee, which resulted in permanent stiffness of that joint, and which finally disabled him from performing his official duties;" that, on the 29th January, 1838, this lameness, thus induced, led him to a fall, which resulted in his death in the following February.

It also appears that the petitioner has no sufficient means to support herself and family.

Zina Pitcher, who was assistant surgeon in the United States army at that time, testifies to the same facts; and that, owing to his lameness, he made a misstep in descending a flight of stairs from his place of business, and fell, fracturing his skull, which resulted in his death.

Mrs. Abby S. Chaplin, sister of the deceased, confirms the statement of the widow.

The committee, therefore, believing this a meritorious case, report a bill for her relief.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 29, 1860.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of Florian Kern, having had the same under consideration, report:

The petitioner was a captain of company D, Kentucky volunteers, in the late war with Mexico. Before and at the commencement of that war, he was the keeper of a coffee-house and tavern in the city of Louisville, in the State of Kentucky. As soon as it was believed that hostilities with Mexico were inevitable, and before any requisition was made upon the States for troops, he commenced raising a company to be offered to the United States, which he boarded at his tavern for some days previous to their being received into the United States service, and his claim is for the board of sixty-four men for twelve days each, at fifty cents a head, per day, amounting to $384. He presents no account in detail, nor does he state the time when—the days of the month upon which—these men were so boarded, and it is obvious that the account was created before there was any authority to do so, as it is said to have been before the 17th of May, on which day they were accepted by the governor of Kentucky. All the testimony in the case goes to prove that the board was furnished "early in May, and, perhaps, in the latter part of April also;" so that the petitioner's claim is against the men and not against the United States.

The committee ask to be discharged from further consideration of this case.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 29, 1860.—Ordered to be printed.

Mr. POWELL submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Thomas O'Sullivan, praying to be allowed an invalid pension, beg leave to report:

That the petitioner states he has faithfully served the country, in war and peace, for upwards of twenty years, and, by reason of his advanced age, is no longer able to discharge the duties of a soldier; and therefore prays a pension.

There is no law allowing pensions for *service* merely; and, as the petitioner has furnished no evidence showing that he was disabled by wounds, or disease contracted while in the line of his duty, in the service of the United States, the committee recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

March 1, 1860.—Ordered to be printed

Mr. Sebastian made the following

REPORT.

[To accompany Bill S. 235.]

The Committee on Indian Affairs, to whom was referred the claim of Willis A. Gorman, for compensation as commissioner in investigating certain charges of fraud against George Alexander Ramsay, beg leave to report:

That on the 5th April, 1853, the Senate passed a resolution requesting the President to cause to be investigated, certain charges of fraud and official misconduct, preferred against Alexander Ramsay, as the late governor of Minnesota Territory, and, by virtue of his office, superintendent of Indian affairs. That this duty had been previously devolved upon the committee of the Senate, who had partially discharged the duty, and, upon the passage of this resolution of the Senate, turned over the records of their proceedings to the President, to continue and complete this duty. The President, thus invested with the duty, commissioned R. M. Young, of Washington city, a cómmissioner, under instructions to proceed to Minnesota, and there to coöperate with Governor Willis A. Gorman, who was then governor and *ex officio* superintendent of Indian affairs, in the investigation of these charges, and fixed his compensation at eight dollars per diem and his necessary expenses. That they jointly sat as a commission, and made their report to the President, who communicated the same to the Senate. That R. M. Young was paid, partly by the Secretary of the Interior, and the balance of his account by the Senate, from its contingent. That the account of Willis A. Gorman, the other commissioner, was presented to the Interior Department for payment, and afterwards lost or mislaid there, while the Secretary of the Interior recommended the payment of these claims by the Senate, and reimbursement of the part payment to Judge Young to the contingent fund of the department.

These facts warrant the following conclusions; upon which the committee recognize this claim.

First. That the President was intrusted and undertook a duty primarily and appropriately belongingly to the Senate.

Second. That he delegated this duty to R. M. Young and Willis A. Gorman, as commissioners, who performed it according to their instructions, and reported their proceedings to the President, which were

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then transmitted to the Senate, from whose authority they had emanated.

Third. That one of the commissioners has been paid the balance of his compensation by the Senate, from its contingent fund, according to the rates previously fixed by the President, while for the same services the other commissioner has not been paid.

This state of facts raises the question whether the services performed by Governor Gorman were such as legitimately belonged to his office as superintendent of Indian affairs. The committee think *not*. The duty of the superintendent of Indian affairs does not embrace the investigation of the frauds or malpractices of his predecessor, except so far as they may be connected with the administration of his ordinary duties. His authority was derived alone from the appointment of the President to that duty, who himself derived it from the Senate. He did it as special, and not as the official representative of the President; as commissioner, and not as an executive officer. If this duty was *by law* executive in its character, it was not competent to the President to confide it jointly to another. The committee is of opinion that these labors were extra-official, and that the claimant should be paid his compensation and reimbursed his actual and necessary expenses, at the same rate as that by which his colleague in those labors compensated.

His account stated is for the amount of $820, for which amount the committee report a bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 100.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the memorial of Horace E. Dimmick, praying remuneration for improvements made by him in artillery, having had the same under consideration, report:

The memorialist asks for an appropriation of $5,000 to reimburse him for losses sustained in his experiments in the manufacture of rifled cannon. He states that he has been testing his improvements for two or three years without success, but at great expense to himself, until December, 1858, when his efforts were triumphant. He also claims to have given much valuable information to the ordnance department in the progress of his experiments.

In examining this case, nothing is found to justify its allowance. The experiments were made for the use of the memorialist, and he is to be benefitted by the success which has attended them.

The committee report that the prayer of the memorialist be refused.

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36th CONGRESS, 1st Session. } SENATE. { REP. COM. No. 101.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

MR. BAYARD submitted the following

REPORT.

The Committee on the Judiciary, to whom was referred the petition of George G. Barnard, assignee of the Hon. David C. Broderick, deceased, praying the enactment of a law authorizing the payment to him of the amount due said Broderick for salary and mileage at the time of his death, have had the same under consideration, and report:

The following facts are set forth in the petition as the ground of relief prayed for by the petitioner:

That the petitioner, at the request and for the accommodation of the Hon. David C. Broderick, deceased, late a Senator of the United States for the State of California, on the 16th March, A. D. 1859, indorsed a certain promissory note made by the said David C. Broderick for the sum of $2,103 17, due and payable December 10, 1859, which was discounted by a bank in the city of New York, and the proceeds received by Mr. Broderick. That the said David C. Broderick, at the time of the endorsement of said note, executed and delivered to the petitioner a certain instrument of writing, assigning and transferring by way of pledge to the petitioner an interest in his salary and mileage due and payable at the commencement of the present session of Congress, as a collateral security, to indemnify and protect the said petitioner from any loss arising in consequence of his said indorsement. That the said promissory note was at its maturity, after the death of Mr. Broderick, protested for non-payment, and has been paid by the petitioner.

It was also stated that Mr. Broderick was unmarried, and that if he left any heirs they reside in California; and it is suggested that it is doubtful whether he did leave any heirs; but the admission is also made, that there are certain persons in California who claim to be such heirs, and that their claim is resisted by the public administrator of the courts of San Francisco. The petition states that it would cause the petitioner great expense, delay, and vexation to pursue his claim against the estate of Mr. Broderick, in California; and that all the property he left is within that State, except what may be due for his compensation as a Senator from March 3, 1859 until his death. The petitioner therefore prays that an act of Congress may be passed

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directing the payment to him by the Treasurer of the United States of the amount that was due to Mr. Broderick for his compensation as a Senator to the time of his death.

Under the provisions of the laws, Mr. Broderick was entitled to no mileage, and the amount due to his heirs-at-law for compensation from March 3, 1859, to the day of his death, September 16, 1859, was $1,619 18.

By the joint resolution approved March 3, 1859, it is provided, "That whenever, hereafter, any person elected a member of the Senate or House of Representatives shall die after the commencement of the Congress to which he shall have been so elected, compensation shall be computed and paid to his widow, or, if no widow survive him, to his heirs-at-law, for the period that shall have elapsed from the commencement of such Congress as aforesaid to the time of his death, at the rate of three thousand dollars per annum."

The committee deem it unnecessary to express any opinion on the question whether the sum due at Mr. Broderick's death is payable to his personal representative, and so liable for his debts, or whether it is to be paid to his heirs-at-law personally, in the event of his leaving no widow. The constitution of the law in this respect is a legal question, which ought to be judicially determined as between creditors and heirs-at-law.

It is, however, so clearly in violation of public policy to permit the accruing compensation of a public officer, which is given for his support and maintenance whilst he holds his office, to be pledged or mortgaged, that, without reference to the relative claims of the heirs-at-law and the creditor claiming under the pledge, the committee are of opinion that the pledge made in this case by Mr. Broderick of his accruing compensation as a Senator ought not to be recognized by Congress as transferring any legal or equitable claim upon the government in favor of the claimant for the specific fund, and therefore recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 102.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 42.]

The Committee on Private Land Claims, to whom was referred Senate bill 42, for the relief of the heirs and legal representatives of Mark Elisha, report:

That the said bill was drawn up by the officers of the General Land Office, in view of the facts set forth in the annexed letter of the Commissioner of the General Land Office, addressed to your Committee:

GENERAL LAND OFFICE, *January* 24, 1860.

SIR: I have the honor to return, herewith, Senate bill No. 42 and other papers, received with your communication of the 19th inst., and have to state that the attention of this office was called to the matter of the unconfirmed claim of Mark Elisha, by the Hon. Thomas G. Davidson, per letter of the 27th ultimo—copy herewith. This claim, entered under No. 365, in the 7th class—being that class of cases not recommended for confirmation—of the report dated 30th December, 1815, of the register and receiver at Opelousas, Louisiana.—See American State Papers, vol. 3, pp. 151 and 179.

From the letter of Mr. Davidson alluded to, it would appear that the land embraced by the claim—alleged to be parts of lots Nos. 3 and 4, south one half of section 20, sections 21 and 28; lot 6, of section 27; and lot No. 1, of section 29, township 2 north, of range 4 east, including a part of the town of Markesville, Louisiana—has been for a long series of years in actual occupancy and peaceable possession of the parties claiming under Mark Elisha.

The accompanying diagram exhibits the several tracts alleged to be, in part, embraced within the limits of the claim, a portion of which, indicated thereon in *blue*, has been reported as swamp land enuring to the State of Louisiana, under act of 2d March, 1849. As the land has been represented by Mr. Davidson as held for municipal purposes, in fact, organized into a town, it is, of course not regarded as falling under the swamp law.

With the exception of the letter from Mr. Davidson, referred to as above, and letters addressed to himself and the Hon. John Slidell, on the 4th inst., copies of which are inclosed, there appears to be no cor-

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respondence in regard to the claim, either on file or of record, in this office.

I am, sir, very respectfully, your obedient servant,

S. A. SMITH,
Commissioner.

Hon. J. P. BENJAMIN,
Chairman of the Com. of Private Land Claims, U. S. Senate.

The Committee, in view of these facts, recommend the passage of the bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 103.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 240.]

The Committee on Private Land Claims, to whom was referred the claim of B. E. Edwards to certain land in New Mexico, renew and adopt the annexed report, made at the first session of the 35th Congress, and recommend the passage of the bill accompanying this report.

IN THE SENATE OF THE UNITED STATES, *March* 8, 1858.

The Committee on Private Land Claims, to whom was referred the claim of B. E. Edwards to certain land in New Mexico, have had the same under consideration, and adopt and submit the following report, heretofore made by the committee upon this case:

On the 16th day of August, 1847, the land commissioners for the county of Bexar, and State of Texas, issued to one Andres Flores a certificate for 640 acres of land as a "head right," of which the following is a copy:

STATE OF TEXAS, *County of Bexar.* } 640 acres, No. 444, second class.

This is to certify that Andres Flores has appeared before us, the board of land commissioners for said county, and proved, according to law, that he arrived in this State previous to the 1st of October, 1857, and that he is a single man, and has resided in the same three years, and performed all the duties required of him as a citizen, and never having received a certificate for the quantity of land now applied for, he is entitled to six hundred and forty acres of land.

Given under our hands and the seal of the county court at San An- [L. S.] tonio, this 16th day of August, A. D. 1847.

THOMAS WHITEHEAD,
Chief Justice and ex-officio Pres't Board Land Comm'rs.
JAMES B. LEE, WM. SMALL, } *Commissioners.*

Attest: THOS. H. O. S. ADDICKS,
Cl'k County court Bexar county, ex-officio Cl'k B. L. Comm'rs.
By BEN. E. EDWARDS, *Deputy.*

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The said Andres Flores, by deed dated the 17th day of August, 1847, conveyed all his right and title to said certificate (No. 444) to Benjamin E. Edwards, who caused the said certificate to be located upon a certain tract of land within the Bexar land district, and a survey thereof to be made on the 8th of September, 1849, as appears from a duly certified copy of the original survey, which is in the words and figures following, to wit:

"STATE OF TEXAS, } *Survey No.* 16.
District of Bexar. }

"Field notes of a survey of 640 acres of land made for Benjamin E. Edwards, assignor of Andres Flores, it being the land to which he is entitled by virtue of a certificate No. 444, 2d class, for 640 acres of land, issued by the board of commissioners of Bexar county to Andres Flores, dated August 16, 1847, said survey containing a salt lake or saline, known as the 'Salina de San Andres' or 'Salina del Cerro Redondo,' and lying between the Sacramento and Organ mountains. Said survey is No. 16, in section No. 15, situated on the east side of, and about five miles from, the Cerro Redondo, and N. 6° E., 57 miles from the springs known as San Nicholas springs, beginning at a point N. 3½° E. 116 miles, 1,140 varas, from a stake set at the ferry north of the town of El Passo del Norte, on the road between said town and Santa Fé, being the southwest corner of survey No. 1, made by M. B. Hays, a stake and mound for southwest corner of this survey; thence N. 1¼° E., 1,100 varas, across the wagon road to said saline; salado, marked E, for northwest corner of this survey, from which a mesquite, two inches diameter, bears N. 48½° E., 16 varas; thence S. 88¾° E., 1,900 varas, to a post marked ⩵ for northeast corner; thence S. 1¼° W., 1,900 varas, to a stake and mound for southeast corner of this survey; thence N. 88¾° W., 1,900 varas, to the place of beginning, bearing marked ⩵.

"Surveyed September 8th, 1849.

"JAS. B. ROBERTS, } *Chain-carriers.*
"JAS. R. SHIPMAN, }

"I, R. S. Howard, deputy surveyor of Bexar district, do hereby certify that the survey designated by the foregoing plat and field notes was made according to law; and that the limits, boundaries, and corners of the same, together with the marks, natural and artificial, are truly described therein.

"R. S. HOWARD,
"*Deputy Surveyor, Bexar District.*"

"SAN ANTONIO, *November* 30, 1849.

"I, James S. McDonald, district surveyor of Bexar district, do hereby certify that I have examined the foregoing plat and field notes, and find them correct, and that they are recorded in my office in Book A, No. 5, page 257.

"J. S. McDONALD,
"*District Surveyor of Bexar District.*"

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The lands embraced within the above plat and survey are within the Territory of New Mexico, and the claimant asks Congress to confirm his title to the said tract of land. To understand fully this case, it is necessary to refer briefly to the history of that part of the Territory in which this tract of land is situate.

By the act of congress of the republic of Texas, approved December 19, 1836, the western boundary of Texas was declared to extend to the Rio Grande river. By a map prepared under the direction of the war office, from the most reliable authorities, in 1844, the Rio Grande, also, is laid down as the western boundary of Texas. After the annexation of Texas to the United States, this government recognized and maintained the boundaries of Texas as defined by the said act of congress of the republic of Texas, of December 19, 1836. Under and by virtue of the act of Congress, approved September 9, 1850, the district of country in which this land is situate was acquired by the general government from the State of Texas. The action of the government subsequent to the annexation of Texas has conceded that the jurisdiction of Texas included the territory in question prior to the relinquishment of the same to the United States; so that, from the date of the certificate from the board of commissioners to a period beyond the location and survey of this tract of land, this part of the territory of the State of Texas was subject to location and settlement under authority from said State.

The committee, therefore, find that the State of Texas, having the jurisdiction, did, by its proper officers, issue a certificate of location, No. 444, to Andres Flores, and that the same was located and surveyed prior to the relinquishment of title by the State of Texas to the general government, and that the claimant only required a patent from the State of Texas, to which he was legally entitled, to form a complete and perfect title to the said tract of land.

The legislature of Texas, by an act approved December 2, 1850, required the commissioner of the general land office of the State of Texas to issue patents for certain lands therein named, included in which was the tract of land in question. But the State of Texas having, prior to the passage of the said act, relinquished her title to the territory in which this tract of land is situate, a patent issued under the said act would have been of no validity, for the title that had theretofore been in the State of Texas had passed to the government of the United States.

The claimant had an equitable or inchoate title under the State of Texas; and the question whether this government is bound by law and good faith to confirm such inchoate titles in a territory acquired from another power, which such power, under the laws, usages, and customs thereof, would have confirmed had such territory continued in their possession, is a question so well settled, both by the laws of nations and the decisions of the Supreme Court of the United States, (see 4 Peters, 512; 7 Peters, 87; and 10 Peters, 330,) that your committee do not deem it necessary to discuss the question.

The government of the United States, by virtue of said act, approved September 9, 1850, having become possessed of the territory in which the tract of land is situate, is therefore bound to confirm the title of

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the petitioner to the same extent as the State of Texas would have done had she continued in possession thereof.

The committee therefore report back the bill without amendment, and respectfully recommend its passage.



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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 104.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

Mr. BAYARD made the following

REPORT.

[To accompany Bill S. 241.]

The Committee on the Judiciary, to whom was referred the petition of McFarland & Downey, praying that the amount due them for rent of their house in Los Angelos, California, occupied by the United States court from 27th October, 1854, to 5th August, 1856, under contracts with the United States marshal of that district, be paid, have had the same under consideration, and report:

The petition is founded on certain contracts made by the United States marshal in California with the petitioners, for the rent of premises in Los Angelos for the use of the United States courts in the southern district of California. The amount claimed is four thousand six hundred dollars; but it appears that the alleged contracts were made without authority by the marshal, and impose no legal obligation on the United States.

The premises were, however, occupied by the United States courts from October 27, 1854, to August 5, 1857, and the owners are entitled to a fair and reasonable rent. The Secretary of the Interior having investigated, through a special agent, the question of value, and ascertained that the rent claimed for a portion of the time is extravagantly high, and the whole of the premises, illegally contracted for by the marshal, unnecessary for the accommodation of the court, the committee are of opinion that the justice of the case will be best reached by confiding to that officer the adjustment of the sum which ought to be allowed to the petitioners for the actual occupation of their premises by the United States courts from October 27, 1854, to August 5, 1856.

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IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany bill S. 94.]

The Committee on Claims, to whom was referred the petition of Samuel V. Niles, report:

This claim was examined by the Committee of Claims of the last Congress, who made a favorable report thereon, accompanied by a bill, which passed the Senate. The present committee concur in the report then made, as follows, viz:

"The memorialist submits the following account:

"UNITED STATES,

"*To Samuel V. Niles,* *Dr.*

"To ninety days' services, as a clerk in the General Land Office, from March 9, 1849, to June 30, 1850, being the number of Sundays between those periods, at $4 per diem... $360 00

"Mr. Niles appears to have been appointed a temporary clerk in the General Land Office on the 9th of March, 1849, under the provisions of the act of August 26, 1842, which provides that 'no extra clerk, for copying, shall receive more than three dollars per day, or for any other service more than four dollars per day for the time actually and necessarily employed.'—(5 Statutes at Large, 526.)

"Under this provision, as appears from a letter of the late Commissioner Wilson, the accounting officers rejected the *per diem* for Sundays. This construction of the law, the Commissioner thinks, is entirely erroneous.

"By the act of March 3, 1849, (9 Statutes at Large, 370,) the Commissioner of the General Land Office was 'authorized to continue three temporary clerks during the recess of Congress, until the patents for bounty lands shall be issued, said clerks to be paid out of the contingent fund.'

"On the 8th of March, 1849, the day preceding the appointment of Mr. Niles, three clerks were appointed, in accordance with that provision, at the same rate of pay, (viz: four dollars per day,) and to perform like duties as those performed by Niles. These three clerks, as is stated, received the *per diem* for Sundays.

"Judge Young, then Commissioner, and who made all the appoint-

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ments referred to, says: 'The facts, as to the services of Mr. Niles, are correctly set forth. I appointed him a clerk in the Land Office, at the time stated, at the same rate of compensation promised to Messrs. Whitney, Brega, and Lucas, and fully intended that no distinction should be made between them, and that he should receive the same emoluments, in every particular, granted them, including the Sunday *per diem*.'

"The ground of distinction taken by the Comptroller seems to have been that the three clerks named were appointed under the special provisions of the act of 1849, which relieved them from the operation of the act of 1842, and that the Commissioner had promised them the Sunday *per diem*.

"The committee are of opinion that the claimant is justly and equitably entitled to the relief asked, and report a bill accordingly."

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IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1860.—Ordered to be printed.

Mr. HAMMOND made the following

REPORT.

[To accompany Bill S. 244.]

The Committee on Naval Affairs, to whom was referred the petition of T. A. M. Craven, a lieutenant in the navy, have had the same under consideration, and report:

That, in the year 1857, Congress passed an act ordering the survey of a route for a ship canal between the Atlantic and Pacific oceans, by way of the Atrato river. Lieutenant Craven, of the navy, was selected by the Secretary of the Navy to command the expedition, and, under him, Lieutenant Michler, of the topographical corps of engineers of the army, was appointed to assist in the survey. For this service, Lieutenant Michler, in conformity with a circular order of the War Department, issued on the 17th of July, 1857, which accorded with previous usage, was allowed four dollars a day extra pay, as commutation for quarters and fuel, and he received eight hundred and eleven dollars and nineteen cents extra pay, out of the original appropriation, which was insufficient from the first. But Lieutenant Craven, his superior officer, who incurred all the responsibility, and all the hardships of this service, and who also acted as purser throughout without any compensation, was denied any extra pay by the Secretary of the Navy. Your committee cannot see the justice of making this discrimination between the officers of the navy and the army, most especially in a case like this, where the officer of the army was performing the duties of his particular arm of the service, whilst the officer of the navy, his superior in rank, was detailed for a duty entirely outside of his profession, and one not to be expected from him. Your committee, therefore, report a bill to require that Lieutenant Craven shall be paid the same amount that was paid to Lieutenant Michler for extra service, namely, eight hundred and eleven dollars and nineteen cents.

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IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1860.—Ordered to be printed.

Mr. GREEN made the following

REPORT.

[To accompany Bill S. 245.]

The Committee on the Judiciary, to whom was referred the memorial of Messrs. Sweeny, Rittenhouse, Fant & Co., ask to submit the following report:

On the 17th of December, 1858, a notice was issued by the Treasury Department, over the signature of the Secretary of the Treasury, inviting sealed proposals for ten millions of the five per cent. stock of the United States, that being the balance of the loan authorized by the act of Congress approved June 14, 1858.

It was advertised in said notice that, preliminary to the consideration of any bid by the Secretary, the bidder would be required to deposit one per cent. of the amount of his bid with a depository of the United States, "subject to the order of the Secretary of the Treasury."

The memorialists bid for three millions of dollars' worth of said stock, and deposited $30,000, according to the requisitions of the notice of the department, with a depository of the United States, of which the Secretary of the Treasury acknowledged to have received the certificate. Their bid for three millions of the stock was accepted at their offer of $2 89 per cent. premium.

The memorialists allege a violation of the contract by the Secretary of the Treasury, in declining to allow the deposit of the amount of their bid at San Francisco, according to their offer, whereby they aver that they have incurred losses in various ways, and have sustained damage to a large amount. The committee intentionally refrain from entering upon the discussion of a question as to consequential damages, as yet unliquidated, springing from an alleged violation of contract by the United States or any high officer thereof. The Court of Claims is the proper and convenient tribunal for the impartial hearing and adjudication of such a question between the parties and for the adjustment of the damages.

It seems that the memorialists proceeded to pay in their bid, notwithstanding their dispute with the Secretary, and that, *prior* to the 15th March, 1859, the day when the amount should have been paid in full, they had paid at New York the sum of $1,550,000, together with

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the premium thereon, and stock for that sum was issued to them or their assignees.

They claim that between the 15th March and the 26th of September, 1859, they had paid an additional sum of $380,000 on the same account, which had been accepted. The Secretary of the Treasury expressly acknowledges to have received at Washington, of this sum, $280,000, besides premium on the same, and to have issued stock accordingly; and his letter of authority to the depository at Mobile to accept $100,000 is exhibited, as under date of August 27, 1859. But the committee are informed that this apparent discrepancy disappears, when it is known that the correspondent of the memorialists only deposited $60,000, instead of $100,000, making the gross sum (besides premium) paid by them, and for which stock was issued, $1,890,000. The remaining sum, $1,110,000, has since been let by the Secretary to other parties, and all the stock authorized by the act of June, 1858, has been taken.

The preliminary deposit made by the memorialists was made in treasury notes, bearing interest at the rate of per cent. per annum to the amount of $10,000, and $2,050 22 specie. Of this amount, it appears the sum of $12,050 22 principal, and $ interest, remains in the treasury, "on the conditions upon which it was originally deposited by the memorialists." Under the circumstances of the case, as no forfeiture of said deposit could be made under the contract, no penalty being declared, and as the amount does not appear to have been absorbed in payment on the bid, and inasmuch as the remaining stock authorized by the act of Congress has been disposed of to other parties by the Secretary of the Treasury, the committee have concluded that no right exists on the part of the United States to detain the balance of said preliminary deposit; but that the same, though in the depository of the United States, together with the interest which has accrued thereon since the date of the deposit, should be refunded to the memorialists.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 108.

IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 246.]

The Committee on Private Land Claims, to whom were referred the following petitions, to wit: 1st. Of the city of New Orleans; 2d. Of Joseph Reynes; 3d. Of John Johnston and Harriet Johnston, Widow Marshal, sole heirs of James Johnston, deceased; 4th. Of the heirs, assigns, and legal representatives of Christoval de Armas, and his son Miguel de Armas, respectfully report:

That the claims of all said petitioners rest upon the same principle, as they are fully set forth and examined in a report made by this committee at the first session of the 35th Congress, which is hereto annexed, and adopted as part of this report.

Your committee, therefore, report a single bill for the relief of all of said petitioners.

IN THE SENATE OF THE UNITED STATES, *May* 26, 1858.

The Committee on Private Land Claims, to whom was referred the memorial of the city of New Orleans, asking confirmation of title to one half of certain lands devised by John McDonough to that city, as tenant in common with the city of Baltimore, report:

The lands represented in the memorial are situate in that part of the State of Louisiana which lies east of the Mississippi and Ibervill rivers, and the lakes Maurepas and Pontchartrain, and are known as the Florida Parishes of Louisiana.

These parishes were not within the present State of Louisiana when it was admitted into the Union, but were cut off from "the adjacent territory occupied by the United States," otherwise known as West Florida, and added to Louisiana by act of Congress passed 14th April, 1812.

The original title to 223,333 acres of the lands described in the memorial was derived from the King of Spain, by purchase from and payment made to Don Juan Ventura Morales, governor general of

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Louisiana and West Florida, in the months of October and November, 1803.

The title to 2,100 acres was derived from a settlement right in favor of Philip Robinson, acknowledged by the Spanish authorities to be a valid claim in 1804.

The title to 1,420 acres was derived from grant made by the Spanish authorities on the 5th of March, 1806.

The titles thus set forth by the memorialists are unquestionably valid, if, at the date when they were acquired, it was within the power of the Spanish government to make sales or grants of land within the territory in which the lands claimed are situated; and this question, it is believed, is now, for the first time, presented for a decision by Congress since the treaty with Spain of the 22d February, 1819, by which the Floridas were acquired.

The examination of this question requires a reference to the history of the negotiations which accompanied not only that treaty, but the treaty of the 30th April, 1803, by which Louisiana was acquired from France. A thorough comprehension of the whole subject requires also a succinct statement of the condition of our relations with France and Spain, so far as concerns our western and southwestern boundaries at the commencement of the present century.

At that period, the American settlements had crossed the Alleghanies, and were rapidly spreading, not only upon the upper waters of the Mississippi, but upon those of the Mobile, the Chattahoochie, and other streams of West Florida. Spain possessed the outlets of these rivers, through which alone could the upper country communicate with the Gulf, as well as the only eligible points at which the productions of this vast interior could be safely deposited for shipment. And Mr. Madison, then Secretary of State, wrote to Mr. Pinckney, our minister at Madrid, on the 30th of March, 1802, that the inhabitants complained that the treaty with Spain "had omitted to provide for the use of the Mobile, Chattahoochie, and other rivers running from our territory through that of Spain."—(2 American State Papers, Foreign Relations, 515.)

With a frontier population coming, for the first time, in contact with a race whose language and institutions—civil, social, and religious—differed from their own, it was not surprising that the tendency to border disturbances was greatly increased, and that the enforcement of federal law over a distant and unsettled region became a delicate and difficult duty.

At this juncture, the wanton suppression of the right of deposit upon the island of New Orleans, by the governor of Louisiana, without the assignment of any other place for that purpose ,as guarantied to the American people by convention, occasioned the highest national excitement. By that act, "agricultural productions," says the historian,* "suddenly lost half their value as well at New Orleans as at Natchez." "Already the cry of alarm was heard, not only in the States of Ohio, Tennessee, and Kentucky, but even in all the old States."

In addition to this source of irritation, the government had been for

* Marbois, page 215.

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some years on the eve of a rupture with France and Spain by reason of spoliations on our commerce. These, with other political considerations of great weight, rendered it incumbent on the administration to make an energetic attempt to settle all pending causes of difficulty, by the acquisition of rights of navigation in the waters of all the south-western streams, and even, if possible, the purchase of the Floridas and of New Orleans. To this purpose were the original negotiations limited, and so important was it deemed, that the most eminent of our statesmen were selected for its accomplishment. President Jefferson selected Mr. King for the embassy to London, Mr. Livingston to France, and Mr. Pinckney to Spain; whilst at home the instructions were prepared under his auspices by Mr. Madison. To this accomplished corps, Mr. Jefferson added the experience of Mr. Monroe, soliciting him, by an autograph letter, to visit Paris as minister plenipotentiary, to aid in relieving the government from the embarrassments which complicated its foreign relations and threatened a disturbance of its peace.

That the original negotiations were limited to the acquisition of New Orleans and the Floridas, particularly West Florida, will be apparent by reference to the instructions of Mr. Madison, of 9th June and 28th September, 1801, (2 For. Rel., 510;) and it further appears, from the same and subsequent instructions, that the government of the United States was then ignorant of the secret cession by Spain to France, although rumors of such cession had already began to circulate in the public papers.

The negotiations were unsuccessful. Mr. Livingston despaired. On the 1st September, 1802, he wrote to the Secretary of State: "There never was a government in which less can be done by negotiation than here. There is no people, no legislature, no counsellors. One man is everything. He seldom asks advice, never hears it unasked. His ministers are mere clerks, and his legislature and counsellors parade officers."

It was after the date of this letter that Mr. Monroe was sent to Paris, with instructions "to procure the cession of *New Orleans and the Floridas* to the United States, and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana."—Letter of 18th January, 1803.—(2 For. Rel., 529.)

On the 11th April, 1803, Mr. Livingston writes: "Mr. Talleyrand asked me this day, when pressing the subject, whether we wished to have the *whole of Louisiana*. I told him no; that our wishes extended only to New Orleans and the Floridas."—(2 For. Rel., 552.) He also writes: "I have used every endeavor with the Spanish ambassador and Lord Whiteworth to prevent the transfer (to France) of the Floridas."

Napoleon, however, pressed upon the American minister the acquisition of the entire province of Louisiana with such rapidity that, notwithstanding the distrust which seems at first to have been entertained by the latter, a treaty was matured and signed within a few days, and the most splendid acquisition ever made by a nation was thus suddenly and unexpectedly added to our domain.

The motives and reasons for this abrupt change of policy on the part of the French government are thus stated by the historian Marbois,

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who was a party to the negotiations, and whose truthfulness and integrity are well established.

On Easter Sunday, the 10th April, 1803, after having attended to the solemnities and ceremonies of the day, Napoleon called two ministers, who had been acquainted with the countries under consideration. Addressing them with that vehemence and passion which he particularly manifested in political affairs, he said: "I know the full value of Louisiana, and I have been desirous of repairing the fault of the French negotiator who abandoned it in 1763. A few lines of a treaty have restored it to me, and I *have scarce recovered it when I must expect to lose it.* But if it escapes from me, it shall one day cost dearer to those who oblige me to strip myself of it, than to those to whom I wish to deliver it. The English have successively taken from France Canada, Cape Breton, Newfoundland, Nova Scotia, and the richest portions of Asia. They are engaged in exciting troubles in St. Domingo. *They shall not have the Mississippi, which they covet.* Louisiana is nothing in comparison with their conquests in all parts of the globe; and yet the jealousy which they feel at the restoration of this colony to the sovereignty of France acquaints me with their wish to take possession of it, and it is thus that they will begin the war. They have twenty ships-of-war in the Gulf of Mexico. They sail over those seas as sovereigns, while our affairs in St. Domingo have been growing worse and worse every day since the death of Leclexe. *The conquest of Louisiana would be easy, if they only took the trouble to make a descent there. I have not a moment to lose in putting it out of their reach. I know not whether they are not already there. It is their usual course, and if I had been in their place I would not have waited.* I wish, if there is still time, to take from them any idea that they may have of ever possessing that Territory. I think of ceding it to the United States. *I can scarcely say that I cede it to them, for it is not yet in our possession. If, however, I leave the least time to our enemies, I shall only transmit an empty title to those republicans whose friendship I seek.* They only ask of me one town in Louisiana; *but I already consider the colony as entirely lost*, and it appears to me that in the hands of this growing power it will be more useful to the policy, and even to the commerce of France, than if I should attempt to keep it."—(Marbois, 263–4.)

The ministers called into council then discussed the policy of selling Louisiana. The discussions were, says the historian, "prolonged into the night. The ministers remained at St. Cloud, and at day-break he summoned the one who had advised the cession of Louisiana, and made him read the dispatches which had just arrived from London. His ambassador informed him that naval and military preparations of every kind were making with extraordinary rapidity."

Upon hearing this intelligence, Napoleon, after some remarks upon the commercial importance of certain military positions in the Levant, which England was supposed to desire, proceeded:

"Irresolution and deliberation are no longer in season. I renounce Louisiana. It is not only New Orleans that I will cede—it is the whole colony, without any reservation. I know the price of what I abandon; and I have sufficiently proved the importance that I attach

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to the province, since my first diplomatic act with Spain for the recovery of it. I renounce it with the greatest regret. *To attempt obstinately to retain it would be folly.* I direct you to negotiate this affair with the envoys of the United States. *Do not even await the arrival of Mr. Monroe; have an interview this very day with Mr. Livingston;* but I require a great deal of money for this war, and I would not like to commence it with new contributions. For a hundred years France and Spain have been incurring expenses for improvements in Louisiana, for which its commerce has never indemnified them. Large sums, which will never be returned to the treasury, have been lent to companies and agriculturists. The price of all these things is justly due to us. If I should regulate my terms according to the value of these vast regions to the United States, the indemnity would have no limits. *I will be moderate, in consideration of the necessity in which I am of making a sale;* but keep this to yourself. I want fifty millions, and for less than that sum I will not treat. I would rather make a desperate attempt to keep these fine countries. To-morrow you shall have full powers."—(Marbois, 274–5.)

A letter of the 29th July, 1803, from the Secretary of State, acknowledging to Mr. Livingston the receipt of his communication informing the government of the United States of this unexpected acquisition, says: "The object of the most sanguine was limited to the establishment of the Mississippi as our boundary. It was not thought that more could be sought by the United States, either with a chance of success, or, perhaps, without being suspected of a greedy ambition, than the island of New Orleans and the two Floridas, it being little doubted that the latter was or would be comprehended in the cession from Spain to France. To the acquisition of New Orleans and the Floridas, the provision was, therefore, accommodated. Nor was it to be supposed that, in case the French government should be willing to part with more than the territory on one side of the Mississippi, our arrangement with Spain for restoring to her the territory on the other side would not be preferred to a sale of it to the United States." After stating that no expectations of success in the objects of the French mission had been entertained, except from some such military necessity as had occurred, the Secretary adds: "It is just ground for mutual and general felicitation that it [the crisis relied on] has issued, under your zealous exertions, in the extensive acquisition beyond the Mississippi.

"With respect to the terms on which the acquisition was made, there can be no doubt *that the bargain will be regarded as, on the whole, highly advantageous.* The pecuniary stipulations would have been more satisfactory, if they had departed less from the plan prescribed; and particularly if the two millions of dollars in cash, intended to reduce the price or hasten the delivery of possession, had been so applied, and the assumed payments to American claimants placed on the footing mentioned in the instructions. The unexpected weight of the draught now to be made on the treasury will be sensibly felt by it, and may possibly be important in regard to other important objects.

"*I can only add the wish of the President to learn from you the understanding which prevailed in the negotiations with respect to the bounda-*

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ries of Louisiana; and more particularly the pretensions and proofs for carrying it to the river Perdido, or for including any lesser portion of West Florida.''

To this question of Mr. Madison no reply seems to have been given; but the United States, from the date of the treaty, always persistently asserted that the cession of Louisiana carried with it the territory lying between the Mississippi and Perdido rivers, while Spain as persistently repelled this pretension, and the matter remained a subject of earnest and angry controversy between the two powers till their dispute was finally settled by the treaty of 1819, whereby Spain ceded the Floridas to the United States.

The titles to the lands now claimed by the memorialists lie within this disputed territory; and although their validity might, in the opinion of the committee, be conclusively established without reference to the merits of the controversy just mentioned, the committee feel it to be their duty to investigate and report on this element of the title of the memorialists, as it is one which they earnestly urge in support of their pretensions.

The description of Louisiana, as ceded by France, is given in the treaty of 1803, in the first article, in these words:

"Whereas, by the article the third of the treaty concluded at St. Ildefonso, the 1st of October, 1800, between the First Consul of the French republic and his Catholic Majesty, it was agreed as follows: 'His Catholic Majesty promises and engages, on his part, to cede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the Duke of Parma, the colony or province of Louisiana, *with the same extent that it now has in the hands of Spain and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States;*' and whereas, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory, the First Consul of the French republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States, in the name of the French republic, forever and in full sovereignty, *the said territory*, with all its rights and appurtenances, *as fully and in the same manner as they have been acquired by the French republic, in virtue of the above-mentioned treaty concluded with his Catholic Majesty.''*

It is obvious, from the very terms of this treaty, that the description of the boundaries was studiously omitted, and that France simply stipulated to convey whatever she had acquired from Spain. It becomes, then, quite interesting to ascertain, if possible, the reasons why so important an element of the treaty as a precise designation of the boundaries of the ceded territory was carefully excluded. Let us, for this purpose, compare the statements made by the diplomatists who negotiated the convention.

Mr. Livingston, in his dispatches, frequently recurs to this subject.

In his disdatch of the 5th February, 1803, he says: "The Floridas not *yet* ceded, (to France,) owing, I believe, to some difficulty about

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Parma. * * * Spain is, however, prepared to make the cession, and I presume it will be done."—(2 For. Rel., 532.)

On the 18th February, 1803: "I have proposed to them the relinquishment of New Orleans, and *West Florida as far as the river Perdido.* * * * The essential fact is that *the Floridas are not yet ceded*"—*i. e.*, by Spain to France.—(Page 533.)

On the 3d March, 1803: "The Floridas are still in the hands of Spain."—(Page 538.)

On the 11th March, 1803: "If, as I begin to believe, they (the French) do not get the Floridas, they will put the less value on New Orleans."

On the 11th April, 1803: "I endeavored to convince the government that the United States would avail themselves of the breach of the treaty to possess themselves of New Orleans and the Floridas; *that Britain would never suffer Spain to grant the Floridas to France*, even were she so disposed, *but would immediately seize upon them as soon as the transfer was made;* that, without the Floridas, Louisiana would be indefensible. * * * I have used every exertion with the Spanish ambassador and Lord Whitworth *to prevent the transfer of the Floridas.*"—(Page 552.)

On the 13th April, 1803, in speaking of the negotiations with Mr. Marbois, whose character for integrity, he says, is established, after mentioning the sum spoken of for the purchase of Louisiana, he adds: "I asked him, in case of a purchase, whether they would stipulate *that France would never possess the Floridas, and that she would aid us to procure them*, and relinquish all right she might have to them? He told me that she would go thus far."—(Page 553.)

On the 12th May, 1803: "I am satisfied that, from this period, they had determined to let us have New Orleans, and the territory above the Arkansas, in exchange for certain commercial advantages; *and that if they could have concluded with Spain, we should also have had West Florida.*"—(Page 558.)

On the 12th May, 1803, he writes in relation to the colonization of Louisiana, that, on his arrival in France, it was a favorite project with the First Consul; "nor would any of them hear of disposing of it by sale; yet so ignorant were they of the nature of their acquisition that they never once suspected THE FLORIDAS WERE NOT INCLUDED IN THEIR TREATY, *till they were convinced of the contrary by the inquiries they set on foot in consequence of* MY INFORMATION."—(Page 557.)

Comment on these passages would be superfluous. The evidence is irrefragable that the American minister had not the least idea that, in purchasing Louisiana, he was acquiring West Florida, within whose limits are situated the lands claimed by the memorialists.

The French diplomatist states, in his history, that the American negotiators at first insisted on a definition of boundaries, which they connected with the idea of a guarantee on the part of France; but there was some difficulty about the precise limit between Louisiana and Florida then pending with Spain, and Mr. Marbois said:

"The circumstances are too pressing to permit us to concert matters on this subject with the Court of Madrid. It would be too long before the discussion could be terminated, and perhaps that government

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would wish to consult the Viceroy of Mexico. Is it not better for the United States to abide by a general stipulation, and, since these territories are still, at this day, for the most part, in the possession of the Indians, await further arrangements, or leave the matter for the treaty stipulations that the United States may make with them and Spain? In granting Canada to the English at the peace of 1763, we only extended the cession to the country that we possessed. It is, however, as a consequence of that treaty, that England has occupied territory to the west as far as the great Northern ocean.

"Whether," continues the historian, "the American plenipotentiaries had themselves desired what was proposed, or that their words afforded them a ray of light, they delared that they kept to the terms of the third article of the treaty of St. Ildefonso, which was inserted entire in the first article of the treaty of cession."

M. Marbois, who offered the draught, said several times: "*The first article may, in time, give rise to difficulties; they are at this day insurmountable; but if they do not stop you, I, at least, desire that your government should know that you have been warned of them.*"

The French negotiator, on rendering an account to the First Consul, pointed out to him the obscurity of this article, and the inconvenience of so uncertain a stipulation. He replied, that, if an obscurity did not already exist, it would, perhaps, be a good policy to put one there."—(Marbois, p. 283.)

Having thus referred to the statements of the two parties who negotiated the treaty, let us next turn to the evidence of the construction which was *originally* put by our government on its own rights under it. On the 29th July, 1803, Mr. Madison's despatch to Mr. Pinckney, at Madrid, opens a fresh negotiation with Spain for the acquisition of the two Floridas, with these words: "You will have learned, doubtless, from Paris, that a treaty has been signed there, by which New Orleans and the rest of Louisiana is conveyed to the United States. The FLORIDAS ARE NOT INCLUDED IN THE TREATY, *being, it appears, still held by Spain.*"—(2 For. Rel., p. 614.)

On the same day that is affixed as the date of the instructions to Mr. Pinckney, at Madrid, viz: July 29, 1803, more elaborate instructions were sent to Mr. Monroe, who had been directed to proceed to Spain, and aid Mr. Pinckney in accomplishing the objects so earnestly sought by our government.

The following passages are extracted from these instructions.—(Am. State Papers, For. Rel., vol. 2, p. 626:)

"It is thought proper to observe to you that, although Louisiana may, in some respects, be more important than the Floridas, and has more than exhausted the funds allotted for the purchase of the latter, *the acquisition of the Floridas is still to be pursued*, especially as the crisis must be favorable to ti." Again: "There is little ground for supposing that the maritime powers of Europe will complain of or be dissatisfied *with a cession of the* TWO FLORIDAS to the United States, more than with the late cession of Louisiana by Spain to France."

The terms of these instructions are too plain to permit a doubt of the construction placed by our government on its acquisition. We had acquired Louisiana, but neither of the *two Floridas*.

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It appears that the first idea of a claim by our government to West Florida, as comprised in its purchase of Louisiana, originated with Mr. Livingston, whose letter of the 20th May, 1803, could not have reached Mr. Madison at the date when he issued his instructions of 29th July of the same year. This letter of Mr. Livingston, dated three weeks after the signature of the treaty, is sufficiently important to be transcribed in full.

"PARIS, *May* 20, 1803.

"DEAR SIR: The subject of this letter is too important to admit of delay, in case the treaties should have been any time in your hands; but as it has not yet been fully considered by Mr. Monroe, he thinks he cannot make it that of a joint letter until we have more fully discussed it, which we propose to do to-morrow or the next day. But as that will be too late for this conveyance, I throw out these hasty thoughts for your consideration. In the meantime, you will consider this rather as a private than a public letter, since it may or may not be made use of to promote such measures as, upon mature deliberation, the President shall think proper to adopt. I do not doubt, however, that Mr. Monroe will concur with me in opinion, after we have discussed the subject, and that we shall, by the next opportunity, write to you officially thereon.

"I informed you long since that, on inquiring whether the Floridas were within the cession of Spain, I was told by Mr. Marbois that he was sure that Mobile was, but could not answer further. I believed his information incorrect, because I understood that Louisiana, as it then was, was made the object of the cession, and that since the possession of the Floridas by Britain they had changed their names. But the moment I saw the words of the treaty of Madrid I had no doubt but it included all the country that France possessed by the name of Louisiana previous to their cession to Spain, except what had been conveyed by subsequent treaties. I accordingly insisted, with Mr. Marbois at the time we negotiated, that this would be considered within our purchase. He neither assented nor denied, but said that all they received from Spain was intended to be conveyed to us. That my construction was right, was fairly to be inferred from the words of the treaties, and from a comment upon them contained in the Spanish minister's letter to Mr. Pinckney, in which he expressly says that France had recovered Louisiana as it formerly belonged to her, saving the rights of other powers. This leaves no doubt upon the subject of the intention of the contracting parties. Now, it is well known that Louisiana, as possessed by France, was bounded by the river Perdido, and that Mobile was the metropolis. For the facts relative to this, I refer you to Raynal and to his maps. I have, also, seen maps here which put the matter out of dispute.

"I called this morning upon Mr. Marbois for a further explanation on this subject, and to remind him of his having told me that Mobile made a part of the cession. He told me that he had no precise idea on the subject, but that he knew it to be an historical fact, and that on that only he had formed his opinion. I asked him what orders had been given to the prefect who was to take possession, or what orders

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had been given by Spain as to the boundaries in ceding it? He assured me that he did not know, but that he would make the inquiry and let me know. At four o'clock I called for Mr. Monroe, to take him to the minister of foreign affairs, but he was prevented from accompanying me. I asked the minister what were the east bounds of the territory ceded to us? He said he did not know; we must take it as they had received it. I asked him how Spain meant to give them possession? He said, according to the words of the treaty. But what did you mean to take? I do not know. Then you mean that we shall construe it in our own way? I can give you no direction; you have made a noble bargain for yourselves, and I suppose you will make the most of it.

"Now, sir, the sum of this business is, to recommend to you in the strongest terms, after having obtained the possession that the French commissary will give you, to insist upon this as a part of your right, *and to take possession, at all events, to the River Perdido.* I pledge myself that your right is good; and, after the explanations that have been given here, you need apprehend nothing from a decisive measure. Your ministers here and at Madrid can support your claim, *and the time is peculiarly favorable to enable you to do it without the smallest risk at home.* It may also be important to anticipate any designs that Britain may have upon that country. Should she possess herself of it, and the war terminate favorably for her, she will not readily relinquish it. With this in your hand, East Florida will be of little moment, and may be yours whenever you please. *At all events, proclaim your right and take possession.*

"I am, sir, &c.,

"ROB. R. LIVINGSTON.

"Hon. JAMES MADISON."

A similar communication was addressed to Mr. Pinkney, at Madrid, and reached him before the instructions issued by Mr. Madison, of 29th July, 1803; for, on the 2d August, 1803, he informs Mr. Madison that he "he had received official information from Mr. Monroe and Mr. Livingston that Louisiana was ceded, *and that they considered the cession as including West Florida.*"—(2 For. Rel., 597.)

The effect of these communications of our ministers in France was speedily apparent, both in the conduct of our negotiations with Spain and in the action of our government at home. Instead of pursuing the instructions of the Secretary of State, and seeking to purchase the *two Floridas*, Mr. Pinckney asserted title to West Florida; and Congress, whilst it passed an act for the establishment of collection districts at New Orleans and Natchez, proceeded cautiously to test the feeling of Spain on the subject, by adding a section to the law *authorizing* the President, "*whenever he shall deem it expedient*, to erect the shores, waters, and inlets of the bay and river Mobile, and of the other rivers, creeks, inlets, and bays, emptying into the Gulf of Mexico east of the said river Mobile and west thereof to the Pascagoula, inclusive, into a separate district."—(Act 24th February, 1804.)

The pretensions of our minister were firmly and persistently resisted by Spain, whilst great offense was taken at the passage of the act just

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quoted, and Mr. Jefferson, in his message to Congress of 8th November, 1804, stated the result as follows:

"Soon after the passage of the act of the last session, authorizing the establishment of a district and port of entry on the waters of the Mobile, we learned that its object was misunderstood on the part of Spain. Candid explanations were immediately given, and assurances that, *reserving our claims in that quarter as a subject of discussion and arrangement with Spain,* no act was meditated, in the meantime, inconsistent with the peace and friendship existing between the two nations."

This complaint had been made to our minister in Spain as soon as the news of the passage of the act reached that country; and Mr. Pinckney, on the 1st of June, 1804, replying to the complaint, says, that he has not yet received any information of the passage of the act, nor instructions on the subject, and recalls to the Spanish minister that he had made "a verbal communication of the contents of an official letter he had received from Mr. Livingston and Mr. Monroe, that they considered *a great part of West Florida*, as so called by the English, included in the cession." He adds: "Such letter *could not have been written* to me by them, officially, without their having been so informed by the French plenipotentiary and government."

Relying on this inference, which we have already seen was erroneous, Mr. Pinckney informed the Spanish minister that he should appeal to the French government to support his view, and the Spanish government made a similar appeal to France.

The result was disastrous to the expectations so confidently entertained by Mr. Pinckney, and which were shared by Mr. Monroe, who made the appeal to France, in a letter dated at Paris, on the 8th of November, 1804.—(2 For. Rel., 634.)

M. Talleyrand made reply, on the 21st December, 1804, (p. 635,) as follows:

"France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not, nor did she wish to cede any other; and that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal expressions of the treaty of St. Ildefonso, by which she had acquired that colony, two years before.

"Now, it was stipulated, in her treaty of the year 1801, that the acquisition of Louisiana by France was a *retrocession;* that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain; the same day she ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this, Spain had received no part, and could therefore give none back to France.

"All the territory lying to the eastward of the Mississippi and the river Iberville, and south of the thirty-second degree of north latitute, bears the name of Florida; it has been constantly designated in that way during the time that Spain held it; it bears the same name in the treaties between Spain and the United States; and in different notes of Mr. Livingston of a later date than the treaty of retrocession, in

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which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida to that on the east of it.

"According to this designation, thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the thirty-first degree, the Mississippi, and the sea, this country ought, in good spirit and justice, to be distinguished from Louisiana.

"Your excellency knows that before the preliminaries of 1762, confirmed by the treaty of 1763, the French possessions situated near the Mississippi extended as far from the east of this river as in the quarters of the Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone, to give the name of Louisiana to the district of Mobile, as to the territory near to the north, on the same bank of the river, which formerly belonged to France.

"These observations, sir, will be sufficient to dispel every kind of doubt with regard to the extent of the retrocession, made by Spain to France, in the month of Vendemiare, year 9. It was under this impression that the French and Spanish plenipotentiaries negotiated, and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before his Imperial Majesty [Napoleon] the negotiations of Madrid, which preceded the treaty of 1801, *and his Majesty is convinced that, during the whole course of these negotiations, the Spanish government has constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile.*

"His Imperial Majesty has, moreover, authorized me to declare to you that, at the beginning of the year 11, General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project, which has not been followed by any treaty, is an evident proof that France had not acquired, by the treaty retroceding Louisiana, the country east of the Mississippi."—(Amer. State Papers, vol. 3, p. 635.)

A similar reply was given to the Spanish government on the 5th Germinal, year 13, (26th March, 1805.)—2 For. Rel., 659.

The pretensions of Spain, thus maintained, were never abandoned, nor has there ever been any determination as to their validity. The committee is therefore forced, in the performance of its duty, to express an opinion upon the relative claims of the two countries in this disputed territory—an opinion which necessarily involves an inquiry into the extent of the rights acquired by France under the treaty of St. Ildefonso; for those, and those alone, were acquired by the United States according to the very words of the treaty of 1803.

Prior to the treaty of 1763, the pretensions of the different European powers which had colonized America were the sources of unceasing controversies, and not unfrequently of hostile collision. The pretensions of Spain dated back to the sixteenth century, and claimed to encircle the Gulf of Mexico from the capes of Yucatan to those of Florida. France, according to her grant to Crozat, claimed all the country between the confines of Mexico and the Carolinas, and the vast regions between the Pacific on the west and the colony of Virginia on

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the east; whilst English pretentions came into conflict with the claims of both those powers.

The treaty of 1763 made a final settlement of the respective pretensions of all the parties. It was agreed that the separation between France and England should be by "a line through the middle of the river Mississippi, from its source to the Iberville, and through the Iberville and the lakes Maurepas and Pontchartrain to the sea." Consequently, England's title was recognized to all the territory east of the Mississippi, except the island of New Orleans, and she therefore became the undisputed owner of the territory in which the lands now claimed by the memorialists are situated. From that date, this territory was called by historians and geographers, West Florida and continued to be known as such to all the governments of Europe. Spain joined in the relinquishment of title, and guarantied to England, "Florida, with Fort St. Augustine and the bay of Pensacola, as well as all that Spain possesses on the continent of North America to the east or the southeast of the river Mississippi."

Under this treaty, England entered into possession of West Florida, proclaimed its boundaries, and held it as her own, without dispute or protest, until Spain, a party to the general war then raging both in Europe and America, conquered it by military force and held it in armed occupation till, in the definitive treaty of peace of 30th January, 1783, England retroceded to her East Florida, and confirmed her with guarantee in possession of *West Florida*. This fact was perfectly well known to the United States before the cession of Louisiana, *and was recognized by treaty with Spain*. In Mr. Madison's instructions to Messrs. Livingston and Monroe, on the 2d March, 1803, he says: "The islands within six leagues of the shore are the subject of a British proclamation in the year 1763, subsequent to the cession of the Floridas to Great Britain by France, which is not known to have ever been called in question by either France or Spain."—(2 For. Rel., 542.)

In the treaty between Spain and the United States, on the 27th October, 1795, the second article provides that "the southern boundary of the United States, which divides their territory from the *Spanish colonies of East and West Florida*, shall be designated by a line *beginning on the river Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east*," &c. The fourth article of the same treaty declares that "the western boundary of the United States, which separates them from *the Spanish colony of Louisiana*, is *in the middle of the channel or bed of the river Mississippi*."

Numerous other articles in the same treaty designate with the same distinctive particularity the different provinces of Spain which lay contiguous with our territory; one, "*the Spanish colony of Louisiana*," bounded by the Mississippi river, but including the island of Orleans; the other, "the *Spanish colonies of East and West Florida, beginning on the river Mississippi*."

These different colonies, known by these distinct appellations to England, to France, to Spain, and to the United States, were in possession of Spain in the year 1800. Her title to the Floridas was de-

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rived from England under the treaty of 1783; her title to Louisiana was derived from France under a secret treaty, dated 3d November, 1762, in which it is described as "the whole country known by the name of Louisiana, together with New Orleans and the island on which the said city is situated." Spain, thus in possession of Louisiana and the two Floridas, with titles derived from different sources, and at different dates, on the 1st October, 1800, by treaty with France, agrees, six months after the full and entire execution of the conditions and stipulations relative to the Duke of Parma, "to retrocede* to the French republic the colony or province of Louisiana, with the *same extent that it now has in the hands of Spain,* and that it had when France possessed it, *and such as it should be after the treaties subsequently entered into between Spain and other States.*"

It seems impossible to give two meanings to this stipulation. For more than a generation the lines of demarcation between Louisiana and the Floridas had been settled by a treaty, to which both the contracting powers had been parties. Louisiana and Florida were as distinctly known in 1800 as now in 1858. The contract on its very face professes to *give back*, to *retrocede*, to *return* to France what Spain had received from *France*. But the Floridas had been acquired from *England*. As if to place the matter beyond a possibility of doubt or even quibble, Louisiana is retroceded, such as it should be "after the treaties *subsequently* entered into between Spain and other States." Those subsequent treaties have already been cited; they were made, one with England in 1783, the other with the United States in 1795; and in both Louisiana is separated from the Floridas, as a distinct colony, whose eastern boundary is the Mississippi, with the solitary exception of the island of New Orleans.

The only argument ever offered by the United States against so plain a proposition, was based on that clause of the description which speaks of Louisiana with the same extent "that it had when France possessed it." Our minister contended that, in order to satisfy this clause of the description, they had a right to go back behind the treaty of 1763, revive the claims of France as they existed before the settlement made in that treaty, and thus carry on pretensions eastward to the Perdido.

The committee cannot but conclude that these pretensions were wholly unfounded; that they were a mere afterthought has already been made apparent by the correspondence of our ministers. Our government knew, long before its acquisition of Louisiana, that the Floridas had not been transferred by Spain to France. Mr. Livingston's letters are constantly filled with statements of his efforts to prevent Spain from making a transfer. He states that the French were ignorant that the Floridas were *not* included in their purchase till he proved it to them; but whilst this assertion shows the knowledge of our government, it is apparent that Mr. Livingston had been deceived by the French diplomatist; for, in the letter of Mr. Talleyrand, we dis-

*The French word "*rétro-céder*" is erroneously translated "cede" in the English text of the treaty of 1803. As the treaty of 1800, between France and Spain, was in French, the French text must of course prevail.

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cover that in 1802 "General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas." It appears to your committee, on a careful review of the whole subject, that no candid mind can resist the conclusion that, however justifiable may have been the pretensions of our government, on the score of policy, and as an effect to the unjust encroachments of Spain in other quarters, and to her spoliation of our commerce, the territory of West Florida was not acquired by the cession from France in 1803, but was *de jure* an appanage of the Spanish crown. If this conclusion be correct, the titles of the memorialists are perfect, and ought to be confirmed.

But whether or not the foregoing views of the committee shall meet the concurrence of the Senate, no doubt exists of the fact that Spain was sovereign *de facto* of the disputed territory at the date of the sales and grants now under consideration. On this branch of the subject a short diversion will be useful, by way of episode, as explanatory of the reasons why the treaty of St. Ildefonso was kept secret, and Spain left in possession of Louisiana until the cession to the United States.

By that singular document, France engaged to "*procure*" for his royal highness the Duke of Parma (who had married a Spanish princess) as much territory adjacent to that which he then held as should raise the number of his subjects to a million, and give him right to the title of king. France guarantied the assent of the various powers and States interested, and the occupation of the territory contemplated by the Duke of Parma, as soon as peace was confirmed between France and Austria.

The territory designated by the treaty is that of Tuscany, in case France should succeed in obtaining it from Austria under pending negotiations, or the three Roman Ecclesiastical provinces, or any other continental provinces of Italy that would "form a rounded estate."

Spain was to retrocede Louisiana six months after the full execution of these stipulations in favor of the Duke of Parma.

Napoleon complied partially with his engagements in establishing the Duke of Parma as King of Etruria; but Spain natually entertained doubts of her own ability or that of the King to maintain possession of the conquered territory without some other guarantee than the pleasure of the conqueror; hence her tenacious adherence to her possession of Louisiana until guarantees of the permanence of the European equivalent were furnished; hence her protest against the acquisition of Louisiana by the United States, at first urgently maintained, but soon afterwards withdrawn under the influence of France.

Her distrust was not unfounded. Napoleon, within a short period, withdrew from the King of Etruria both his title and his possessions. The States of Parma and Placentia were incorporated as the 28th military department of France, and afterwards conveyed to the Empress Marie Louise and the prince, her son, in full property. Tuscany was added to France as the kingdom of Taro, and the King of Etruria transferred to the western coast of Europe, and made king of northern Lusitania. Thus Spain had been deprived of the equivalent stipulated for Louisiana, and Napoleon had sold it for seventy-five millions of francs. It is not very surprising that she should be dissatisfied with

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the arrangements thus made by the despotic chieftain of France, nor that she repulsed, with unyielding pertinacity, the American claim to extend the eastern boundary of Louisiana.

The nature of the treaty of St. Ildefonso was such as to make it imperative on the contracting powers to leave Spain as the ostensible owner of Louisiana, as its sovereign *de facto*, and as such to leave her with power to make valid sales of land in the territory east of the Mississippi, even if it were really included in the cession of Louisiana.

How could such a treaty be revealed without defeating its own objects? France was parcelling out provinces held by other powers. It was promising that kings and emperors should do its biddings. It was covenanting to make and unmake monarchs, and a bare suspicion of the terms of the compact would have united the whole continent in opposition to its execution.

At the same time it is to be observed that the treaty does not cede Louisiana to France *in presenti*. It promises a retrocession *in futuro*, "six months after the full compliance with the stipulations in favor of the Duke of Parma." Spain does not, by its terms, strip herself of one attribute of her sovereignty; no limitation is imposed on her power to sell and grant lands in the ceded territory, any more than on her power to administer justice or exercise any other right of eminent domain. She remains sovereign *de jure* as well as *de facto* until six months shall have elapsed after the compliance with the stipulations in favor of the Duke of Parma; after the lapse of those six months she will no longer be sovereign *de jure*, but she will remain so *de facto* till the delivery of possession, or, at all events, till notice shall be given of the existence of the treaty.

Hence it may readily be perceived why Mr. Marbois professed ignorance of the extent of the cession; why Talleyrand said that nothing had been positively done in regard to boundary; why Napoleon said that if obscurity did not already exist in the treaty with us, it would, perhaps, be good policy to create it.

Spain was thus left designedly in possession of Louisiana as sovereign *de facto*, until its cession to the United States. Salcedo arrived in New Orleans in June, 1801, with a commission from the King of Spain, as governor of the provinces of Louisiana and West Florida, and his predecessor, the Marquis of Casa-Calvo, sailed for Havana. It was not till the end of March, 1803, that Laussat arrived, as colonial prefect, appointed by France, and announced by proclamation that General Victor, who had been appointed captain general of the colony, would arrive towards the middle of April. On the 18th May, Salcedo and Casa-Calvo, (the latter having returned from Havana for the purpose,) issued their proclamations as commissioners appointed to deliver Louisiana to France. In this proclamation it was stated "*that the limits on both sides of the river Mississippi should continue as they remained by the fifth article of the definitive treaty of peace, concluded at Paris on the 10th December*, 1763; and accordingly the settlements from the bayou Manchac, as far as the line which separated the dominions of Spain and those of the United States, *should remain a part of the monarchy of Spain, and be annexed to the province of West Florida.*" No objec-

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tion was made by the French prefect, and the historian, Judge Martin, continues:

"Everything seemed now ready, and the arrival of Victor, the commissioner of France for receiving possession was hourly expected; every one had his tri-colored cockade ready to be stuck on his hat as soon as the Spanish flag was lowered and the French hoisted, when a vessel from Bordeaux brought accounts of the sale of the province by Bonaparte to the United States."—(2 Martin's His. La., 189, 190.)

On the 31st October, 1803, Congress authorized the President to take possession of the territory. The President appointed Governor Claiborne and General Wilkinson. Napoleon appointed Laussat commissioner, in lieu of Victor, to receive possession from Spain and deliver it to the United States; and on Wednesday, the 30th November, 1803, Laussat having exhibited to Salcedo an order from the King of Spain for the delivery of the province, the keys of New Orleans were delivered to Laussat, the Spanish colors hauled down, and those of France displayed in their place. On Monday the 20th December, 1803, possession was in like manner delivered by Laussat to the American ministers, who had arrived a few days before.

The delivery of possession being thus confined to the Iberville on the east, both by Spain to France and by the latter to the United States, Spain remained in possession of the country between the Iberville and Perdido as its sovereign *de facto*, and with claim of sovereignty *de jure*, until long after the sales and grants of the lands now claimed by the memorialists.

The memorialists state that the United States acknowledged this actual possession and occupancy of West Florida by Spain in every manner in which such an acknowledgment could be made; "that they paid duties at Mobile and Pensacola in the Spanish custom-houses for their own goods sent by government itself to their troops in Alabama and Georgia, and that in the year 1812, even after Congress had annexed West Florida to the contiguous territory, a vessel was libelled in the United States court, in Alabama, because she came from Mobile, then in possession of Spain, to Fort Stoddard, contrary to the provision of the embargo laws. She was acquitted, and the Secretary of the Treasury ordered an appeal, because Mobile was in possession of Spain, and a foreign port."

If, however, any further evidence were required to prove the continued occupation of West Florida by Spain as sovereign *de facto*, *with the acquiescence* of the United States, the history of the year 1810 puts the fact beyond controversy.

In the summer of that year, a number of the inhabitants of West Florida marched, of their own authority, on Baton Rouge; captured the fort, then in possession of Spain; *declared their independence;* framed a constitution, and elected Fulivar Skipwith governor.

In their declaration of independence they attest the loyalty with which they have served their king and preserved his territory for him, and give their reasons for declaring their independence. They then sent a communication to the President, asking to be annexed to the Union. On the receipt of this communication, the President issued a proclamation, in which he declared that the United States had

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always considered the territory in question as belonging to them; "*that the acquiescence of the United States in the temporary continuance of said territory under the authority of Spain* was not the result of any distrust of their title," but was occasioned by conciliatory views; that "*acts of Congress, though contemplating a present possession by a foreign authority*, have contemplated also an *eventual* possession by the United States," and he, therefore, authorized Governor Claiborne to take possession of the territory. The proclamation added, that the territory "in the hands of the United States will not cease to be the subject of a fair and friendly negotiation and adjustment."—(3 Foreign Relations, 397.)

Under this state of facts, your committee think it would be a violation of every principle of justice and national law to confiscate titles acquired from Spain by her own subjects, in territory possessed by her *de facto*, with the acquiescence of the United States, and claimed by her as being hers *de jure*. How could it be expected that her own subjects should doubt or question her right to convey the soil under circumstances like those just narrated? No case has ever come before the notice of the committee which more imperatively demands the application of the principle sanctioned by the law of nations, that private individuals may safely deal with the sovereign *de facto*, and that their rights are not affected by any subsequent determination that the sovereignty *de jure* is in another power.

Chancellor Kent says: "The national character of the place agreed to be surrendered by treaty continues, as it was, under the character of the ceding country, until it be actually transferred. Full sovereignty cannot be held to have passed by the mere words of the treaty, *without actual delivery*. To complete the right of property, the right to the thing and the possession of the thing must be united. This is a necessary principle in the law of property in all systems of jurisprudence."—(1 Kent, 177.)

In treating of this very disputed territory, the Supreme Court of the United States said, in De la Croix *vs.* Chamberlain, 12 Wheaton, 600: "The United States have never, as far as we can discover, distinguished between the concessions of land made by the Spanish authorities *whilst Spain was in the actual possession of it*, from concessions of a similar character made by Spain within the acknowledged limits."

In Rhode Island *vs.* Massachusetts, 12 Peters, 749, the same court says: "Grants by a government *de facto* of parts of a disputed territory *in its possession are valid against the State which had the right*."

The committee, therefore, conclude that even if the United States had the right to the disputed territory, the grants in question made by the sovereign in possession were valid, and conveyed a perfect title to the grantees.

Whatever may be thought, however, of the positions heretofore assumed by the committee, there remains a third ground in which the memorialists assuredly may rest their claims with entire security.

They are protected by the faith of treaties.

On the 22d February, 1819, the long-pending controversy was closed. In the second article of the treaty made on that day "his Catholic Majesty cedes to the United States, in full property and

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sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, *known by the name of East and West Florida.*"

ARTICLE 8. "All the grants of land made before the 24th January, 1818, by his Catholic Majesty, or by his lawful authorities in the said territories, ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands to the same extent that the same grants would be valid if the territories had REMAINED *under the* DOMINION of his Catholic Majesty. * * * All grants made since the said 24th January, 1818, when the first proposal on the part of his Catholic Majesty *for the cession of the Floridas* was made, are hereby declared and agreed to be null and void."

It will naturally excite surprise that, in the face of such treaty stipulations, the rights of the memorialists should require any action on the part of the government. What higher title, it may be asked, can the memorialists desire than a treaty title, one which the Constitution of the United States declares to be equal in dignity to the supreme law of the land? The answer to so natural an inquiry will soon present itself in the progress of this report; but, in the meantime, the committee deems it proper to present some extracts from the negotiations in relation to this clause, which will render palpable its true intent.

From the period when our government first put forward its pretensions over the disputed territory, it has been solicitous to prevent the value of its alleged acquisition to be impaired by any grant of the soil; and this policy found expression in the 14th section of the act of 26th March, 1804, declaring "all grants for lands within the territories ceded by the French republic to the United States by the treaty of 30th April, 1803, the title whereof was, *at the date of the treaty of St. Ildefonso*, in the crown, government, or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby, declared to be, and to have been from the beginning, *null void, and of no effect in law or equity.*"

The committee cannot refrain from interrupting, for a moment, the thread of their argument, for the purpose of a passing comment on the monstrous injustice to private rights, apparent on the very face of this law which confiscated, or attempted to confiscate, titles acquired in good faith, at any date after the 31st October, 1800, regardless of the fact that, by the very terms of the treaty of St. Ildefonso, made on that day, Spain did not cede her rights over Louisiana, but only promised to cede them at a future date, viz: six months after certain conditions should be accomplished, and regardless of the further fact that even this promise of cession was carefully kept secret from the whole world, so as to render it impossible for the grantee even to suspect that the power in possession of the territory *de facto* had parted, or promised to part, with any of its rights of eminent domain; but the committee forbear to enlarge on the subject, because it does not bear on the precise point now under consideration.

When negotiations, long interrupted, were renewed in 1818 between John Quincy Adams and the Chevalier de Onis, a proposition was

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made by the former for a settlement of all outstanding difficulties with Spain, including not only the eastern boundary, but the western boundary of Louisiana, and the claims of our citizens to indemnity for spoliations.

On the 16th January, 1818, his propositions were in these words:

"1. Spain to cede all her claims to territory eastward of the Mississippi.

"2 and 3. * * * *

"4. * * * * * *No grants of land subsequent to the 11th August*, 1802, *to be valid.*"—(3 Am. State Papers, For. Rel., 464.)

On the 24th January, 1818, the Spanish minister answered: "Nor can I omit to declare to you, sir, that the pretension of annulling the grants of lands in Florida since August, 1802, would be *in opposition to all the principles of justice.* These grants are made in a lawful manner," &c.

Mr. Adams was put on his guard by a letter from Mr. Ewing, our minister, dated at Madrid on the 10th February, 1818: "The king has lately made large grants of land in East Florida to several of his favorites, and I am credibly informed that, within these few days, he has, by a sweeping grant, given all the remainder to the Duke of Alagon, captain of his guards, and the Count of Punon Rostro, one of his chamberlains. This is, perhaps, his mode of preparing for a *cheap* cession of the territory to the United States."—(3 For. Rel., 509.)

On the 26th April, 1818, he again writes, that in reference to a cession of Florida, in compensation of American claims, he had told the Spanish minister that these claims would have to be paid out of the sale of the lands. "Now the king had lately given all those lands away, (as I had duly informed my government,) to complete the transaction it would, therefore, be absolutely necessary that the whole of those grants should be cancelled." And on 14th May, 1818, he announces, "the council sent orders to the Duke of Alagon and the Count of Punon Rostro, directing them not to make sales of the lands granted to them."—(3 For. Rel., pp. 511–12.)

On the 18th July, 1818, Mr. Ewing says to Mr. Pizzarro, the Spanish secretary of state, "that it is quite certain that the United States cannot receive Florida as indemnity for its reclamations, *if all the cessions to individuals since the date of the convention* (1802) *are not annulled.*"—(3 For. Rel., 516.)

Finally, the following were the propositions of the negotiators who concluded the treaty in Washington. The Chevalier Onis proposed, on 24th October, 1818, this clause:

"His Catholic Majesty * * * * to put an end to the differences which now exist between the two governments, cedes to them, (the United States,) in full property and sovereignty, the provinces of East and West Florida, with all their towns and forts. * * * *The donations or sales of lands, made by the government of his Majesty, or by legal authorities, until this time, are nevertheless to be recognized as valid.*"—(3 For. Rel., 530.)

Mr. Adams answers, 31st October, 1818: "Neither can the United States recognize as valid all the grants of land until this time. * * It is well known to you, sir, that notice has been given by the min-

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ister of the United States in Spain to your government that *all the grants of land lately alleged to have been made by your government within those territories must be cancelled*, unless your government should provide some other adequate fund, from which the claims above referred to of the United States and their citizens may be satisfied."

Mr. Adams then proposes, "that all grants of land in any part of the territories to be ceded by Spain to the United States subsequent to the year 1802 are to be held null and void."—(Page 531.)

Don Onis replies, 16th November, 1818: "To this modification, in its absolute sense, I cannot assent, inasmuch as it is offensive to the dignity and imprescriptible rights of the crown of Spain, which, as the legitimate owner of *both the Floridas*, had a right to dispose of those lands as it pleased; and further, as the said modification would be productive of incalculable injury to the *bona fide* possessors who have acquired, settled, and improved those tracts of land.

"*The extent of what I can agree to is*, that the *late* grants made by his Majesty in the Floridas, *since the 24th January last*, the date of my first note announcing his Majesty's willingness to cede them to the United States, shall be declared null and void." * * *—(Page 532.)

Mr. Onis then submitted a draft of an article, and Mr. Adams a counter-draft, the article being No. 9 in the projêt of a treaty by Mr. Onis, and No. 8 in the counter projêt of Mr. Adams.

Mr. Onis—Article 9.	*Mr. Adams—Article* 8.
All the grants of lands made by his Catholic Majesty, or by his legitimate authority, in the aforesaid two Territories of Florida, and others which his Majesty cedes to the United States, shall be confirmed and acknowledged as valid, excepting those grants which may have been made after the 24th January of last year, the date that the first proposals were made for the cession of these provinces, which shall be held null, in consideration of the grantees not having complied with the conditions of the cession.	All grants of land made by or in the name of his Catholic Majesty in the aforesaid Territories, after the 24th January, 1818, shall be null, the conditions of the said grants not having been performed by the grantees. *All* grants made *before that date* by his Catholic Majesty, or by his legitimate authorities in the said territories, *the conditions of which shall have been performed by the grantees, according to the tenor of the respective grants*, and *none other*, shall be confirmed and acknowledged as valid.

When Mr. Adams's counter-projêt appeared, the Chevalier Onis said, on this article, that it could not be varied from what was contained in his projêt, as the object of the last clause therein is merely to save the honor and dignity of the sovereignty of his Catholic Majesty; and on this objection, Mr. Adams agreed to the Chevalier's proposal, with the following explanation: "That all grants of land which shall not be annulled by this convention, are valid to the same extent as they are binding on his Catholic Majesty."—(3 For. Rel., 619-20-21.)

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By comparing these different projêts, the words in italics in the counter-projêt of Mr. Adams, and finally the words just quoted, the whole purpose of the clause is apparent. The United States were guarding themselves from any admission of the validity of such enormous *colonization* grants as were usually made by Spain, on condition of settlement and cultivation, of which they had recently been warned in the examples of the grants to the Duke of Alagon and Count of Punon Rostro. There was no danger as regarded *bona fide* sales or grants to settlers. Hence the requirement of Mr. Adams to insert words authorizing the United States to avail themselves of a non-compliance with conditions by grantees; hence his insertion of the provision that the titles should have the *same* validity against the United States as against Spain.

Before the ratification of the treaty, the United States, however, required of Spain a special acknowledgment of the nullity of the three principal grants made subsequent to the date indicated in the treaty, and it was accordingly ratified on the 24th of October, 1820, with a special declaration that the three grants made in favor of Alagon, Punon Rostro, and Vargas, were not ratified by the treaty. Now, the grant to Vargas was of land *west of the Perdido river, in the disputed territory*, and the inference is irresistible that, in the opinion of the government, the title of Vargas would have been ratified by the treaty, unless excepted by special provision.

The question again recurs, how happens it that the memorialists require any action on the part of Congress to impart validity to grants thus recognized as perfect by the most solemn of all the public acts of a nation—a treaty duly ratified? The answer is to be found in the adjudications of the Supreme Court of the United States.

In the case of Foster and Elam *vs.* Neilson, 2 Peters, 396, which involved the title to a tract of land within this disputed territory, the Supreme Court held the following propositions to be sound in law, viz:

1st. That Congress having, by the act of 1804 and other acts, asserted title to this disputed territory under the treaty of cession of Louisiana, "it is the province of the court to conform its decisions to the will of the legislature;" the question being one of disputed boundary between nations, in which "it is scarcely possible that the court of either country should refuse to abide by the measures adopted by its own government."

2d. That as, by the treaty of 1819, the King of Spain had ceded to the United States "all the territories which *belong to him* to the eastward of the Mississippi, known by the name of East and West Florida," the court was *without power* to consider the disputed territory as included in this cession, because the United States had always claimed that this disputed territory did not "*belong to him*," and that the court was not authorized to question this claim, which was a *political* one, and did not present a *judicial* question.

3d. That the eighth article of the treaty did not *proprio vigore* confirm the titles embraced within its terms, but merely pledged the faith of the nation that Congress would confirm them.

In the case of the United States *vs.* Arredondo, 6 Peters, 691, the second of the above propositions was again affirmed, the court stating

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"that the settlement of boundaries was not a *judicial* but a *political* question; that it was not its duty to *lead* but to *follow* the action of the other departments of the government;" "*that, however individual judges might construe the treaty of St. Ildefonso*, it is the province of the court to conform its decisions to the will of the legislature."

But, in the same case, the court also held that, under the treaty of 1819, the cession to the United States was only of land not previously granted by the crown, (page 738,) and that private titles were confirmed by *the words of the treaty itself, which excepted them from the general grant to the United States*, in all other parts of Florida.

The third proposition of the court, in Foster and Elam *vs.* Neilson, was (after being shaken in Arredondo's case) deliberately overruled in Percheman's case, 7 Peters, 58. Finally, in the year 1850, an attempt was again made, in the case of the United States *vs.* Reynes, 9 Howard, 127, to induce the Supreme Court to take *judicial* cognizance of the titles of the unfortunate proprietors who had, half a century before, bought and paid for their lands within this disputed country, from the sovereign who held it and claimed it as owner, and in whose possession the United States had *avowedly acquiesced*, for *political reasons*. The court again said: "Whether, by the treaties of St. Ildefonso and of Paris, the territory south of the 31st degree of north latitude was ceded to the United States, is a question into which this court *will not now inquire*. The *legislative* and *executive* departments of the government have determined that the entire territory was so ceded. This court have solemnly and repeatedly declared that this was a matter peculiarly belonging to the cognizance of those departments, and that the propriety of their determination it was *not within the province of the judiciary to contravene or question*."

It thus appears that the memorialists, by the action of the government, are left without *even a chance of trying their title*. Congress passes acts referring them to the judiciary. The judiciary decides that it cannot examine the merits of their claim, because those merits depend on a *political* not a *judicial* question. Bandied backwards and forwards from one department of the government to the other, their rights have actually been sported with for fifty years. The violated faith of treaties calls aloud for redress. It is a scandal upon public justice that this state of things should endure a day longer. The whole case may be stated in a word. The United States, after years of dispute about a boundary with Spain, make a treaty by which Spain cedes her rights on the express condition that her grants shall be respected. And because she says she cedes the territory which *belongs to her*, the court holds that it is not at liberty to carry out the treaty until Congress will be pleased to say that the disputed territory did *belong to her*.

It is plain, from the language of the court in the cases cited, that the judges really thought Spain was right in the controversy. If they had thought our government right, it was very simple and easy to say so. The very excuse given for *not* deciding the merits shows whence the embarrassment of the court arose.

The committee will not assume to say that the court was wrong in

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declining to decide the cases submitted to it, according to the very plain meaning of the treaty, as expressed on its face and in the correspondence of the diplomatists who negotiated it; but they feel bound to say that there is no possible excuse for any further refusal by Congress to redeem the plighted faith of the nation.

The objects and purposes contemplated by the eminent statesmen who conducted our negotiations with France and Spain have long since been accomplished. The acquisitions which their sagacious foresight deemed so indispensable to the safety, progress, and prosperity of our country, have long since been secured. It is not for us to question the policy which urged so vigorously pretensions that, to say the least, were exceedingly doubtful.

If these great national purposes were still in jeopardy, if all their momentous consequences were still at hazard, a stern political necessity might excuse, if it could not justify, a pitiless sacrifice of individual rights. But that day has happily passed. Neither France nor Spain now hold a foot of soil on the North American continent. The battle has been fought and won, and not even political expediency can now be pleaded in excuse for the confiscation of private rights.

Your committee report a bill for the relief of the memorialists, and include in it certain other claims referred to them which rest on the same principles as those involved in the claim of the memorialists.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 109.

IN THE SENATE OF THE UNITED STATES.

MARCH 5, 1860.—Ordered to be printed.

Mr. TEN EYCK submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Barnet W. Dole, heir-at-law of Eunice Dole, the widow of Enoch Dole, who was a surgeon's mate and a surgeon in the service of the United States, in the revolutionary war, make the following report:

The memorial sets forth, in substance, that Enoch Dole entered the service of the United States about the 27th of April, 1775, and continued therein, as a surgeon's mate and surgeon, until March 9, 1776, when, while with the American army on the heights of Dorchester, he was killed. That he left a widow, the said Eunice Dole, and the petitioner, his only child, him surviving; that his widow died on the 23d of September, 1822; and the petitioner prays that he, being the heir-at-law of the said Eunice Dole, widow as aforesaid, Congress will pass a law appropriating to his benefit the sum of $3,360, which, he alleges, is the amount of seven years' half-pay of the said Enoch Dole, to which his widow was entitled in her life time, (but never received,) under a joint resolution of the Continental Congress passed on the 24th of August, 1780, which extended to the widows of those officers who had then, or should thereafter, die in the service; the provisions of the joint resolution of May 15th, 1778, which declared that all military officers commissioned by Congress who should continue in the service during the war, after the conclusion of the war, should be entitled to receive annually, for the term of seven years, one half of the then pay of such officers.

The committee are of opinion, that if all the allegations contained in the petition were fully sustained by proof, (which in their judgment is not the case,) still that the petitioner is not entitled to the relief prayed for.

The resolution of August 24, 1780, extended the provisions of the resolution of May 15, 1778, to the widows of the officers designated in the resolution of 1778.

The officers designated in the resolution of May 15, 1778, were all military officers who *then were*, or *thereafter might be*, in the service of the United States, and should continue therein during the war, &c.

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The application of this last resolution was extended to such officers as were *then in*, or who *might thereafter be*, in the service of the United States, but it did not extend to such officers as prior to the date of that resolution had been, but were not at that time, in the service.

Dr. Enoch Dole was killed on the 9th of March, 1776, nearly two years prior to the passage of the resolution of May 15, 1778, and this case does not come within its provisions.

The committee, therefore, report adversely to the prayer of the petitioner.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 110.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 1860.—Ordered to be printed.

Mr. GRIMES made the following

REPORT.

[To accompany Bill S. 247.]

The Committee on Pensions, having had under consideration the memorial of Mary Elizabeth Castor praying for a pension, beg leave to report:

That it appears that petitioner was married, in 1839, to Samuel Whitehorn, who was then a first lieutenant in the United States infantry; that, in the year 1840, he was ordered to Fort Winnebago, Wisconsin, where he died, on the 2d November following, of a fever caused by the malaria, to the influence of which he was subjected while at Fort Howard, leaving her with an infant son, a few weeks old, in great destitution; that more than ten years after her said husband's death she married Thomas F. Castor, who was a cadet, in 1841; brevet second lieutenant dragoons, July 1, 1846; first lieutenant, October, 1851, and died at Fort Tejon, California, December 21, 1855; that she resided with her husband at his post in California; that for some years prior to his death they resided under a tent, where, partly in consequence of exposure, she believes he died as above stated; that her husband, at his death, left her almost entirely unprovided for; that she returned to the Atlantic States, and has since remained entirely dependent upon her friends; that her father is a chaplain in the United States navy, with small means and a large family, and, therefore, unable to render her very little assistance; and that the state of her health is such as to prevent her from earning a livelihood for herself.

The records of the surgeon general's office show that the first husband of petitioner was, on the 24th August, 1840, attacked with a fever of an "inflammatory character," but of an "intermitted type," and that the official report shows that, in all probability, Lieutenant Whitehorn's system was predisposed "to an attack of fever by the influence of malaria while at Fort Howard."

The records also show that her late husband, First Lieutenant Thomas F. Castor, 1st regiment United States dragoons, died at Fort Tejon, California, of "*phthisis pulmonalis*," (consumption.)

Hon. Charles Mason, late Commissioner of Patents, says: "I have been well acquainted with her (the petitioner) since some time pre-

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vious to her first marriage, and believe the statements given to be substantially correct; many of the facts are known to me personally."

Hon. J. W. Grimes, United States Senate, says: "I have known Mrs. Mary E. Castor more than twenty years, and know the facts set forth by Judge Mason to be true. I also know that the sight of Mrs. Castor is so far impaired that she is entirely disabled from sewing or reading, and unable to do anything towards her own support, and that this injury to her sight is permanent."

Your committee, therefore, report a bill for her relief, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1860.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 249.]

The Committee on Indian Affairs, to whom was referred the memorial of Samuel J. Hensley, having had the same under consideration, report:

That the history of this case is so clearly and fully stated in the opinion of the Court of Claims, which subjected it to a thorough scrutiny of the facts, as to render it unnecessary to do more than to adopt their finding, in their own words, and the conclusion to which the committee has arrived from the facts thus found. The court say as follows:

This is one of a class of cases pending before this court, and arising under contracts made by commissioners and Indian agents of the United States in the State of California. The action of these commissioners and agents in making the contracts, and the validity of the claims founded on them, have been in the argument of all of them, rested in great measure upon the condition of the Indian country at the time the contracts were made, and thus that local history is a part of the evidence in this class of cases.

By act of Congress, September 28, 1850, (9 Stat. at Large, 519,) the President was authorized to appoint three Indian agents for California; and by act September 30, 1850, (9 Stat. at Large, 558,) an appropriation of $25,000 was made, "to enable the President *to hold treaties* with the various Indian tribes in the State of California."

Under the former act, Redich McKee, George W. Barbour, and O. M. Wozencraft, were constituted severally Indian agents in California, on October 10, 1850, (S. Doc. 4, p. 7,) but on the 15th of the same month their functions as Indian agents were suspended, and they were appointed "commissioners to hold treaties with various Indian tribes in the State of California, as provided in the act of Congress approved September 30, 1830." (S. Doc. 4, p. 8.)

By act of Congress, February 27, 1851, (sec. 3, 9 Stat. at Large, 586,) it was enacted "that hereafter all treaties with Indian tribes shall be negotiated by such officers and agents of the Indian Department as the President of the United States may designate for that purpose."

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Under this act the functions of Messrs. McKee, Barbour, and Wozencraft, as Indian agents in California, were revived, and as such they were "designated to negotiate with the Indians in California," under the instructions theretofore given them as commissioners. (S. Doc. 4, p. 14.)

By letter, dated October 15, 1850, (S. Doc. 4, pp. 8, 9,) the commissioners had been instructed as follows: "As set forth in the law creating the commission, and the letter of the Secretary of the Interior, the object of the government is to obtain all the information it can with reference to tribes of Indians within the boundaries of California, their manners, habits, customs, and extent of civilization, and to make such treaties and compacts with them as may seem just and proper. On the arrival of Mr. McKee and Mr. Barbour in California, they will notify Mr. Wozencraft of their readiness to enter upon the duties of the mission. The board will convene, and after obtaining whatever light may be within its reach, will determine upon some rule of action which will be most efficient in obtaining the desired object, which is by all possible means to conciliate the good feelings of the Indians, and to get them to ratify those feelings by entering into written treaties binding on them towards the government and each other. You will be able to judge whether it will be best for you to act in a body, or separately, in differents parts of the Indian country."

It is observable that these instructions are very general; that they specify nothing but the objects of the government, and that emphatically repeating that object to be "to conciliate the good feelings" of the Indians, and to confirm those good feelings by permanent treaties, they leave it to the commissioners "to determine upon some rule of action which will be most efficient in attaining the desired object."

The reasons of the generality of these instructions, and the extent of the discretion vested in the commissioners, are illustrated by the preceding paragraph in the same letter: "The department is in possession of little or no information respecting the Indians in California, except what is contained in inclosed copies of papers, a list of which is appended to these instructions; but whether even these contain sufficient data to entitle them to full confidence, will be for you to judge, and they are given to you merely as points of reference."

The generality of the instructions is pressed upon the attention of the department, in a letter dated December 6, 1850, (S. Doc. 4, p. 52,) in which Commissioner McKee states that the commissioners regret that their instructions from the government "are so meager and indefinite, and throw upon them, necessarily, so much responsibility. In the absence of direct and positive instructions, or even counsel and advice, we must do the best we can, relying upon your approval of what we may do, based upon an honest desire to promote at once the best good of the Indians, while we maintain the honor and evince the benevolent designs of our government towards the unfortunate aborigines."

Thus empowered and instructed, the commissioners entered upon their duties by convening and organizing at San Francisco, January 13, 1851, and after obtaining information from the governor of California, and from the members of its legislature, then in session at

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San José, they proceeded to the Indian country in California, and the condition of that country at this time makes a material fact in this class of cases. The discovery of gold had filled it with miners, whose sudden and extensive emigration had brought into collision the interests of the whites and the rights of the Indians. Difficulties of a serious character had arisen between them, and, beginning in the northern part of the State, as early as July 6, 1850, (S. Doc. 4, pp. 38, 52,) had extended to its southern border, (S. Doc. 61, pp. 2, 3.) Mr. Adam Johnston, in his official report as sub-agent, dated September 16, 1850, (S. Doc. 4, p. 44,) says of the Indians: "They have an indefinite idea of their right to the soil, and they complain that the *pale faces* are overrunning their country and destroying their means of subsistence. The immigrants are trampling down and feeding their grass, and the miners are destroying their fish-dams. For this they claim some remuneration, not in money—for they know nothing of its value—but in the shape of clothing and food."

And in December 6, 1850, (S. Doc. 4, p. 52,) Commissioner McKee, quoting an informant, says: "He informs me that the Indians on the waters of the Sacramento are in a very dissatisfied and unsettled state. Just before he left, there was an outbreak, in which blood had been shed on both sides, and the next news from that quarter will probably announce increased disturbances, if not a general war between the whites and Indians." And in the same letter he thus continues: "They were mustering volunteers at Sacramento city and at other points when my informant left, and bloody work was anticipated. What is to be the result of this state of things I cannot even conjecture. The Indians claim the country as their native soil, or hunting and fishing ground, and the whites want to explore it for gold, and, if they find the metal there, will insist on retaining its possession." And in his letter of February 11, 1851, (S. Doc. 4, pp. 54, 55,) he says of the southern district: "So many direct injuries have been inflicted on these Indians by the whites, and so many promises made them of restitution and redress, all of which remain unfulfilled, that they have lost all confidence, and are now, we are told, fighting with desperation for their lives and their country. The whites have driven most of the southern tribes up into the mountains, from whence, as opportunities serve, they sally out into the valleys to steal and drive off the cattle and mules, as the only alternative for starvation. Then comes up the cry of Indian depredations, invasion, murders, and the absolute necessity for exterminating the whole race." And generally the details of the evidence submitted to the court (S. Doc. 4, pp. 58, 60, 61, 62, 64, 65, 66, 71, 72, 81, 82, 83, 85, 89, 109, 113, 115) confirm the information given to the commissioners, and of which the summary is reported by them, (S. Doc. 4, p. 56,) that hostilities of a deadly character existed between the Indians and whites in different portions of the State, threatening, indeed, *a general border war*.

And the state of the Indian country when the commissioners began their labor in it is clearly shown by the fact that the troops of California were in the field engaged in actual hostilities with Indian tribes, (S. Doc. 4, p. 71,) and by the instruction to the commissioners, May 9, 1851, (S. Doc. 4, p. 15,) in which the Commissioner of Indian

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Affairs says: "I have been informed that it is deemed necessary, by the War Department, to commence active military operations against the Indians in California; and in that event it will be highly important that one or more of the agents shall accompany each detachment of the troops sent against them, so as to be in readiness to act in the capacity of negotiators should occasion require. What particular negotiations may be required, it is impossible for this office to foresee; nor can it give any specific directions on the subject. Much must be left to the discretion of those to whom the business is immediately entrusted."

In this state of things, the commissioners adopted the measure of bringing the Indians from their homes in the mountains and mining regions, and placing them on reservations made for them by the commissioners from the unoccupied lands in the plains; and they proceeded to enter into treaties with the Indians, in which their removal into the reservations was made an indispensable condition, and their subsistence there was provided for, for the years 1851 and 1852. In the report of the commissioners, dated March 25, 1851, (S. Doc. 4, pp. 69, 70,) in detailing their proceedings in the formation of the first treaty which they made, they say: "After submitting our propositions to them, we desired them to retire and consult among themselves upon the terms that we had proposed, and in an hour we would again meet them and learn their decision, as well as hear propositions from them if they desired to make any. When we again met them they expressed themselves satisfied with the terms we offered, except their removal from their mountain fastnesses to the plains immediately at the foot of the mountains. We then explained to them the necessity of such a removal and location, and *that we would treat with them upon no other condition;* believing that, if they were to remain in the mountains, constant conflicts between the Indians and miners would take place; that the Indians could not, nor would they attempt to, support themselves otherwise than by stealing horses, mules, and cattle from the farmers in the plains, and by depredating upon small parties of miners in the mountains. After we had explained these matters fully to them they again consulted together, and finally agreed to remove their families to the plains, as we desired."

And the proceedings and purposes of the commissioners are succinctly stated by Commissioner Barbour, (S. Doc. 61, p. 2,) when, after describing the strife between the Indians and the whites, he says: "Under such circumstances, the commissioners undertook to effect a reconciliation and carry out the plan agreed upon for treating with the Indians. Treaties were, with much trouble and delay, made by the joint board of commissioners with several tribes, with the terms of which you were in due time made acquainted. A very important feature in these treaties, and one, too, without which no treaty could have been made with the Indians, was the supply of an agreed amount of beef and flour to aid in the subsistence of the Indians treated with during the years 1851, 1852. Without some such provision, the commissioners, as well as every intelligent man in California, knew that no treaty made with these Indians would be observed by them. Necessity, as well as inclination, would compel them to steal from the whites animals on

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which to subsist, as, in a large majority of cases, the stores of acorns laid up by them had been destroyed by the whites. The commissioner, therefore, urged by the calls of humanity and the voice of the whole country, could do nothing else than agree to furnish the provisions stipulated in the different treaties."

And the policy of the commissioners is stated by Commissioner Wozencraft, May 14, 1851, (S. Doc. 4, pp. 82, 83:) "You have been advised of the policy which we have deemed expedient to adopt; permit me to say a few words in relation to it. The common and favorite place of abode of the Indians in this country was in the valleys and within the range of mountains; the greater portion were located and had resided, as long as their recollections and traditions went, on the grounds *now being turned up for gold*, and now occupied by the gold-hunters, by whom they have been displaced and driven higher up in the range of mountains, leaving their fisheries and acorn grounds behind.

"They have been patient in endurance, until necessity taught them her lesson, which they were not slow to learn, (as it is measurably intuition with the Indian,) and thus they adopt from necessity what was deemed a virtue among the Spartans; and the result is, we have had *an incipient border war*, many lives have been lost, an incalculable amount of property stolen, and the development and settlement of the country much retarded; and this will ever remain unavoidable so long as they are compelled or permitted to remain in the mountains. They can come down in small marauding parties by night and sweep off the stock of the miners and farmers, and before the loss is known they will be beyond pursuit; and I venture the assertion that this would be the case in defiance of all the troops that could be kept here.

"Our policy is, as you have been informed, to get them down from their mountain fastnesses and place them in reservations along in the foot-hills bordering on the plains; the miners will then be between them and the mountains, making a formidable cordon, or barrier, through which it would be difficult to take their families unobserved; and in those reservations there will be no place for concealing stolen stock, and they can there have all the protection which can and should be afforded them against their persecutors; and lastly, they will there learn the ways of civilization, and thereby become useful members in the community instead of being——"

In pursuance of this policy, the commissioners acted jointly, until May 1, 1851, (S. Doc. 4, 74,) and thereafter severally, in forming the treaties under which the claim I read before the court has arisen.

All the treaties made by the commissioners, jointly or severally, contained the stipulations that the Indians should remove from their mountains into the reservations on the plains, (S. Doc. 4, pp. 128, 138,) and should there receive specified amounts of provision for each of the years 1851, 1852, and as we have seen this was the policy adopted by the commissioners, and by them reported to the department in the beginning of their proceedings. (S. Doc. 4, pp. 128, 138.)

On May 22, 1851, the Commissioner of Indian Affairs addresses the commissioners, officially, thus:

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"GENTLEMEN: Your letters of March 5 and 25, 1851—the last inclosing a copy of a treaty entered into with the chief captains and head men of six tribes of Indians in California, and one from Agent McKee, of March 24, 1851, have been received.

"The department fully appreciates the difficulties with which you had to contend in executing the important trust confided to you, and is highly gratified with the results thus far achieved, especially with your energy and dispatch in procuring a location for several tribes of Indians, and promptly removing them to it.

"The provisions of the treaty, a copy of which is acknowledged above, are approved of."

Under the treaties the Indians were removed on to the reservations. (S. Doc. 4, pp. 70, 252.) The land of these reservations was poor in quality, uncultivated, and stinted in natural productions, and it was a necessary consequence of such removal of the Indians that they should be supplied with food. Mr. Wozencraft says, (S. Doc. 4, p. 83:) "The country set apart for them is very poor soil; only a small part of it is adapted to agricultural purposes." Mr. Johnston says, (S. Doc. 4, p. 105:) "On the breaking out of the war, in December last, the Indians returned to the mountains, leaving behind them their principal stores of subsistence, intending to return for them as necessity required. The whites, in pursuing them, burned and destroyed all that fell in their way; consequently, at the time the different treaties were entered into the Indians of this region were destitute of anything to subsist upon, even if left to range at liberty over their native hills. Under each treaty they were required to come from the mountains to their reservations on the plains at the base of the foot-hills. They were but children of nature, ignorant of the arts of agriculture, and incapable of producing anything, if they had been placed on the best soil of the earth. They came from the mountains without food, depending on the small amount allowed in their treaties, with the roots and seeds to be daily gathered by their females; these have been found wholly inadequate to their necessities." Again, Mr. Johnston says, (S. Doc. 4, 244:) "In none of these reservations is there any agricultural land, except in spots; a few acres only can be found together, and those upon the banks of the streams." And Superintendent Beale says, (Doc. 4, p. 325:) "With reference to the character or quality of the land reserved by the treaties for the Indians, I can only speak from personal observation with regard to those selected in the southern portion of the State. They are such as only a half-starved and defenseless people would have consented to receive, and, as a general thing, they embrace only such lands as are unfit for mining or agricultural purposes." And Commissioner McKee (S. Doc. 4, p. 249) says: "In my judgment, there are not more than two or three out of the whole number of reservations which any practical man or company would purchase, *as a whole,* at even one cent per acre, subject to State and county taxes. Still, we had endeavored to include in every such selection some good lands capable of subsisting the Indians; and it would have been a wretched policy, as well as gross injustice, to have done otherwise. Our object had been to give them lands which they could work, and upon the product subsist, after two or three years,

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during which the government would aid them by supplies of food, clothing, &c."

The effect of the removal of the Indians on to the reservations was to put an end to the strife in the Indian country, which threatened a general Indian war, and to secure to the miners the peaceable possession of extensive and valuable mining districts. Mr. Johnston says of the Indians, December 3, 1851, (S. Doc. 61, p. 12:) "Those with whom treaties have been entered into, residing in any agency upon the San Joaquin, Frezno, Mercede, and Tuolumne and Stanislaus rivers, have been seemingly quiet and contented since I have been supplying them with food." And Commissioner Barbour says of the same Indians: "They occupied the country about the headwaters of the Tuolumne, Mercede, and Mariposa rivers, embracing some of the richest gold mines of the State; from the most of which they had driven the miners, killing many of them, and having driven off and destroyed a large number of horses, mules, and beef battle. By the terms of the treaty they surrendered all claims to this extensive rich mineral region, and accepted a tract of country allotted to them between the Tuolumne and Mercede rivers, to which they removed shortly after the treaty, and where they were living quietly and contentedly, and doing well when I last saw them in the month of September, 1851. And of the Indians treated with April 29, 1851, he says, (S. Doc. 4, p. 252:) "The Indians treated with on this occasion inhabited the country on the Mariposa, Chouchille, Trezno, Upper San Joaquin, and King's rivers, embracing a very large extent of the very richest gold region in the State; from which they had driven the miners, after killing many of them, and destroying their property. They, by this treaty, surrendered their title to hundreds of miles of country rich in gold, and accepted a district of country specified in the treaty, sufficient for their purposes, and well adapted to their wants. Shortly after the treaty they all removed to and settled in the district of country allotted to them, and were working industriously, doing well, and living contentedly in their new home when I left them in September last," (1851.) Mr. Wozencraft says, December 1, 1851, (S. Doc. 4, page 229:) "The Indians throughout my district are quiet and peaceable;" and again, May 29, 1852: "The Indians throughout my district are quiet and peaceable, except some few thefts;" and (S. Doc. 61, p. 24) gives Dr. Rejois's statement: "The Indians, in good faith, have come from the mountains, given up their mines and hunting grounds to the miners, and are desirous of learning from the white man the customs of civilized life."

By Senate Document 4, pp. 268, 326, it appears that the treaties made by the commissioners were submitted by the Commissioner of Indian Affairs to Lieutenant Edward F. Beale, with directions to report "his views as to the merits" of the treaties. In his report, he says: "With reference to my views as to the merits of the treaties, I state that I regard the general line of policy pursued by the commissioners and agents in negotiating with the Indians as proper and expedient under the circumstances. My own personal knowledge and experience in Indian affairs, and particularly in reference to the tribes within the State of California, incline me to the opinion that to secure

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their peace and friendship, no other course of policy, however studied and labored it may have been, could have so readily and effectually secured the object in view."

But it is observable that this commendation applies only to the general line of policy adopted by the commissioners, viz: the removal of the Indians to reservations, and their temporary supply there with subsistence; and it is not to be extended to the terms of any particular contract for supplies, or the circumstances of its execution. (S. Doc. 57, p. 2; S. Doc. 4, p. 366.)

Congress appropriated by act September 30, 1850, (9 Stat. at Large, p. 558, c. 91,) to enable the President to hold treaties with the various Indian tribes in the State of California, twenty-five thousand dollars. And by the act of February 27, 1851, (9 Stat. at Large, p. 272, c. 12,) "For expense of holding treaties with the vrrious tribes of Indians in California, in addition to the appropriation of the 30th of September, 1850, $25,000.

The amount of these appropriations (fifty thousand dollars) was, by the acts themselves, applicable to *the holding* of treaties, and to no other purpose. It had no reference to expenditures incurred in the fulfillment of treaty stipulations, and was not therefore applicable to the contracts claimed upon; and the commissioners were instructed by the department, in its dispatch of June 25, 1851, (S. Doc. 4, p. 17,) which informed them of the remittance of the appropriation last made, that articles deliverable under the treaties must be provided for by future appropriations.

By instructions from the department, dated June 27, 1851, (S. Doc. 4, pp. 17, 18,) the commissioners were informed that the amount of the appropriation stated above ($50,000) was all that was applicable to *the negotiation* of treaties in California, and were instructed, "when the funds referred to have been exhausted, you will close *negotiations*, and proceed with the discharge of your duties as agents simply, as the department could not feel justified in authorizing anticipated expenditures beyond the amount of the appropriations made by Congress."

These instructions prohibited the commissioners from negotiating or entering into treaties after the appropriations were exhausted, but they had no reference whatever to the action of the commissioners under treaties made before the appropriations were exhausted.

All the treaties made by the commissioners were rejected by the Senate.

The statute of August 30, 1852, (10 Stat. at Large, p. 56,) appropriated: "For the preservation of peace with those Indians who have been dispossessed of their lands in California, until permanent arrangements be made for their future settlement, the sum of one hundred thousand dollars: *Provided*, that nothing herein contained shall be so construed as to imply an obligation on the part of the United States to feed and support the Indians who have been dispossessed of their lands in California."

And by the act of March 3, 1853, the President was authorized to make five military reservations from the public domain in the State of California, and the sum of two hundred and fifty thousand dollars

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was appropriated to defray the expense of subsisting Indians in California, and removing them *to said reservations* for protection.

And the annual appropriation acts of 1854–5–6–7–8, contained similar provisions for concluding the removal and continuing the subsistence of the Indians.

The petitioner claims, that under a contract made February 10, 1852, between one Wozencraft, commissioner and Indian agent on the part of the United States, he (the petitioner) sold to the United States nineteen hundred head of beef cattle, to be delivered between the Mokelumne river and the Four rivers when, and as the same should be required by said Wozencraft, at the price of fifteen cents per pound, to be paid in bills drawn by Wozencraft upon the Secretary of the Interior.

And the petitioner avers in his petition that he delivered the said nineteen hundred head of cattle, weighing 883,333⅓ lbs., which, at the contract price, amounted to the sum of one hundred and thirty-two thousand and five hundred dollars; that said Wozencraft gave him the seven drafts or bills drawn on the Secretary of the Interior, and which are specified in the petition, and amounted to the said sum of $132,500; that the bills were presented to the Secretary of the Interior for payment, and were protested for non-acceptance and non-payment in the month of March, 1852, and the bills are now in the possession of the petitioner, and exhibited in the case.

The petitioner claims on the contract of sale and for the cattle delivered, and not on the bills or drafts. A paper purporting to be the contract, and referred to in the petition as Exhibit A, was produced, but proof of its execution was not made; it is annexed, and marked Exhibit A.

But O. M. Wozencraft, in his deposition taken in Washington March 24, 1856, in his answer to the tenth direct interrogatory, states: "I caused supplies of beef to be purchased of Samuel J. Hensley for various tribes of Indians in the San Joaquin valley. The quantity was nineteen hundred head of cattle, averaging in weight five hundred pounds each, at fifteen cents per pound.

By this statement the weight of the cattle delivered was 950,000 pounds, and the price $142,500, or $10,000 more than the sum alleged in the petition to be due, or the amount of the bills exhibited in the case.

But in the "vouchers" inclosed to the department by O. M. Wozencraft September 18, 1852, are his certificate (dated 11th of February, 1852) of the correctness of Hensley's bills against the United States for 1,900 head of cattle "furnished Indians," &c., of 500 pounds weight each, $142,500, and Hensley's receipt (dated February 11, 1852,) for drafts for $142,000. The discrepancy in the amount claimed in the petition and in the evidence is not accounted for otherwise than by the fact appearing on the petition that it was not signed by Mr. Hensley, but by his original counsel in the case.

In the argument for the petitioner at this term of the court it is contended that, under the contract made by Hensley and Wozencraft, there were delivered to Wozencraft 1,285 head of cattle, and to Lieutenant Beale, superintendent, 438 head, making in all 1,713 head of

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cattle, averaging 500 pounds in weight, which, at fifteen cents per pound, amounted to $128,475.

The delivery of 1,285 head of cattle to Wozencraft is testified to by M. B. Lewis, J. J. Visonhaller, and Lewis Leach, deponents for the petitioner, as made in May, 1852, to Major Savage, sub-Indian agent, and acting for Wozencraft; and these deponents all testify that the cattle delivered to Savage were slaughtered and distributed to the Indians, and declare they are "familiar" with the matter of the distribution, and they thus swore positively to the slaughter and distribution of 1,285 head.

But it appears by the deposition of Lieutenant Beale, taken for the United States, that he received November 30, 1852, from O. M. Wozencraft, an order on Visonhaller for 212 head of cattle, and that he subsequently collected 212 head as left on hand or supposed to be lost out of the 1,285. There is nothing in the case from which it can be inferred that the disposition by Lieutenant Beale of these 212 ever came to the knowledge of either Lewis, Visonhaller, or Leach; yet the 212 were included in and made a part of the 1,285 head they testify were slaughtered and distributed to the Indians, and their inaccuracy in this respect weighs against their testimony where opposed by other evidence.

Then, as to the 408 head of cattle alleged to have been delivered to Lieutenant Beale, these deponents for the petitioner all swear to the delivery in the spring of 1853; but in what way they knew the fact, or ascertained the number, is not shown, for they were not cross-examined on these points or any other, and Lieutenant Beale in his deposition makes no mention of any such delivery to him, and mentions only the receipt of 212 head, collected by him as above stated, although he answers, under the broad interrogatory (5th): State if you know anything connected with the claim of Major Hensley against the United States for cattle supplied to the Indians in California; and, if yea, what it was?

Lieutenant Beale says in his deposition: "From all that I could learn when I was in California as superintendent of Indian affairs, and have every reason to believe, that the claim of Major Hensley against the United States is a just one." But there is no evidence in the case that Lieutenant Beale knew of any claim of Major Hensley's, beyond that specified in the account he annexed to his deposition as received from Visonhaller, for 1,285 head of cattle. And Lieutenant Beale's deposition is not an official report, and his *opinion* is not evidence here, whatever weight it may be entitled to elsewhere. As a witness, his only authority was to state *facts* as distinguished from *opinions*.

Mr. Wozencraft, in his deposition, testifies to the delivery of the whole nineteen hundred head of cattle; but his statements, when collated with his answers to Lieutenant Beale, set forth in Doc. 4, p. 368, appear to be made without personal knowledge of the facts.

We are of opinion that the evidence, when allowed all its proper force, shows the delivery under the contract of only 1,285 head.

S. Doc. 4, p. 389, shows that Lieutenant Beale, November 30, 1852, received an order on Samuel Hensley for 612 head of government cattle, and (S. Doc. 4, p. 405, November 20, 1842,) Mr. Wozencraft speaks of them as then "in charge of Major Hensley." There is no

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evidence in the case that any of these were received by Lieutenant Beale; and that they were not, is the inference from the fact, that Lieutenant Beale, in his deposition, taken in September, 1856, mentions the 212 head of cattle collected by him, and referred to in the order given on Visonhaller at the same time with the order on Hensley, and makes no mention of this latter order or of any receipt under it.

The statement of Joel H. Burkes (S. Doc. 57, p. 5) is not shown, and does not appear to attach to the cattle sold by Major Hensley.

As to the weight of the cattle sold by the pound, there is no evidence that they were actually weighed, and the testimony in the case (S. Doc. 61, p. 17) shows the custom of the country was to take the estimate of persons on the ground—500 pounds seems to have been fixed upon as the average weight of the cattle sold in California.

The price of fifteen cents per pound is shown to have been a reasonable price at the time by the deponents for the petitioner in this case, and by the documents in evidence, (S. Doc. 61, p. 17; S. Doc. 4, pp. 16, 17, 18.)

It is shown in Senate Doc. 4, pp. 95, 96, that the treaty with these Indians, for whose supply the contract in this case was entered into, was made and concluded April 9, 1851, and the terms of the treaty as to supplies of food for the Indians in 1851 and 1852 are there mentioned.

It is claimed that the United States are bound to pay for the 212 head of cattle, collected and received by Lieutenant Beale. The reasons and the mode of the action of Lieutenant Beale are shown in Senate Doc. 4, p. 367, and in his receipt for the cattle, p. 359, he states: "All of the above to be held by me, subject to the decision of the department." What that decision was is not shown. There is no evidence that these cattle were ever returned to Mr. Hensley, or paid for by the United States. But the United States cannot be charged by the acts of its officers not within the line of their duty, and there is no evidence that Lieutenant Beale or the department were authorized to make purchases for the Indians *on the credit* of the United States, or to adopt or approve contracts so made.

We are of opinion that the case must be decided on considerations common to the class of cases to which it has been said it belongs, and irrespective of its peculiar circumstances or merit, and that in this case, as in each of its class, the question is, whether the contract claimed upon, is the contract of the United States, as made or adopted by their authority.

The whole authority of the commissioners *as such* was "to hold treaties with various Indian tribes in the State of California," and the meaning of "the terms *to hold treaties*" is clearly defined and precisely limited by the provisions of the constitution and the uniform practice under it, by which the executive is authorized to mold the terms of treaties, while the consent of the Senate is necessary to give them the sanction of law, authorizing action under them. It is entirely clear upon the evidence that the contracts claimed upon were made, and the supplies claimed under the contracts were furnished, months after the treaties to which they are referred had been agreed upon and reduced to writing and signed, and their formal execution as mere documents

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completed; and with such execution the holding of the treaties was necessarily and entirely fulfilled, and the functions of the commissioners under the terms of their commission were determined, and for any further action on their part there was no authority in the words of their commission.

It was claimed that the treaties could not have been held or made without stipulations for these supplies of provisions in aid of the subsistence of the Indians. But the evidence does not show this; on the other hand, it tends to show that the Indians were willing to enter into treaties, but were unwilling to remove from their homes into the reservations, and it was only their removal which made the stipulations of the supplies necessary. In the report of the commissioners dated March 28, 1851, (S. Doc. 4, pp. 69, 70,) in describing the course of their negotiations with the Indians, they state: "When we again met them they expressed themselves satisfied with the terms we offered, except their removal from their mountain fastnesses to the plains immediately at the foot of the mountains. We then explained to them the necessity of such a removal and location, and that we could treat with them on no other condition, believing that, if they were permitted to remain in the mountains, constant conflicts between the Indians and whites would take place." This official report, made at the time of the transactions, is the best evidence of their circumstances and purpose. Besides, this removal of the Indians on to reservations was the policy of the commissioners, agreed upon and adopted on consultation by them before negotiating with the Indians, and before they entered the Indian country; (S. Doc. 4, pp. 59, 60, 63; Doc. 61, p. 2); and it was suggested to the department by Commissioner McKee, (Doc. 4, p. 53,) as early as December 1, 1850, and more than three months before any treaty was made or proffered. And all this tends to show that the removal of the Indians to the reservations was a condition enforced upon them by the commissioners, and that with the Indians it was not a requirement, but an objection, in the treaties made.

Then it is said that the department approved the policy of the commissioners in removing the Indians to the reservations, and thereby adopted the act and its direct consequences of furnishing them with provisions there. (Doc. 4, pp. 15, 20.) And thus, the question is whether it was in the power of the Executive, under all the circumstances of the case, to authorize or adopt these contracts.

Under the clause in the constitution which authorizes the President to make treaties, the power of the President is like that of the commissioners here, to *hold treaties* only, and the Executive, therefore, had no more authority than the commissioners to carry those treaties into execution before their ratification by the advice and consent of the Senate.

The circumstances of the case are claimed to be, that a strife, destructive of life and property, and threatening the peace of the country, was raging in the State of California, and the question is, whether, to end this strife, by separating the parties to it, the executive could use the means these commissioners used, *of pledging the credit of the United States.*

The Constitution gives to the Executive no such power in terms, and

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the provisions and purpose of the Constitution preclude its implication. The power in the executive to pledge the credit of the country would render nugatory the provision of the Constitution that "no money shall be drawn from the treasury but in consequence of appropriations made by law," and would baffle the extended purposes of that provision. The power, if implied to any degree, must be to every degree, and would place the resources of the country at the disposal of the executive, and this would change the operations of the government, which the Constitution expressly makes. Admitting, therefore, all the plaintiffs claim, that the department charged with the management of Indian affairs approved the policy of the commissioners, and adopted its consequences, yet that gave to the commissioners no power to pledge the credit of the United States; such a power belongs exclusively to the Congress of the United States.

But the commissioners were also Indian agents, and it is claimed that the power to make these contracts was, under the circumstances, within their official authority as Indian agents.

The statute of the United States, June 30, 1834, (Stat. at Large, vol. 4, p. 757, sec. 7,) enacts as follows: "And it shall be the general duty of Indian agents and sub-agents to manage and superintend the intercourse with the Indians within their respective agencies, agreeably to law; to obey all legal instructions given to them by the Secretary of War, the Commissioner of Indian Affairs, or the superintendent of Indian affairs, and to carry into effect such regulations as may be presented by the President."

The general terms "to manage and superintend the intercourse with the Indians," &c., cannot in this statute be construed to involve the power to make any purchases for or on account of the Indians, because that subject is specifically provided for, in all cases contemplated by the statute, in the 13th section, which appoints specific agencies for the purpose of making purchases; and, to guard against frauds, makes express and careful provisions for the delivery of all articles purchased; and these specific agencies, and the plain purposes of the 13th section, would be rendered nugatory by construing that the power to make purchases and distribute articles purchased was involved in the general terms of the 7th section, to "manage and superintend intercourse with the Indians."

It may be that the cases in which these contracts were made were not contemplated in the 13th section, and that therefore they may not be directly within its provisions; but there is nothing to show that they were contemplated in the 7th section. And if the general terms, "manage and superintend intercourse with the Indians," do not include power to make purchases for the Indians in cases contemplated in the statute, they cannot be construed, of their own force, to involve such power in cases not contemplated by the statute.

By the remaining clause of the 7th section, the agents and sub-agents are "to obey all legal instructions given to them by the Secretary of War, the Commissioner of Indian Affairs, or the superintendent of Indian affairs, and to carry into effect such regulations as may be prescribed by the President." But if there is no power in the Executive to pledge or dispose of the credit of the United States, no

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regulations or instructions from any of the executive officers mentioned in this section of the statute, and no rules of the Indian Bureau could authorize agents or sub-agents to make these contracts.

It is claimed that the contract in this case has been affirmed by Congress, and appropriations made for its payment, in the act of August 30, 1852, and subsequent appropriation acts.

In the act of 1852, all that relates to California is in these words: "For the preservation of peace with the Indians who have been dispossessed of their lands in California, until permanent arrangements be made for their future settlement, the sum of one hundred thousand dollars: *Provided*, That nothing herein contained shall be so construed as to imply an obligation on the part of the United States to feed and support the Indians who have been dispossessed of their lands in California."

The argument for the petitioner is, that this statute was intended to provide for obligations of the United States, "to feed and support the Indians *in* 1852;" the proviso expressly declares, no such obligation shall be implied from the act. Then the statute denotes in terms the period to which its appropriation is to be applied. It speaks of course from its date, August 30, 1852, and says its provision is for the preservation of peace, *until* the *future* settlement of the Indians, and is thus on its face prospective merely.

The act of 1853 authorized *new reservations* for the Indians, and then provided means for their removal to these new reservations, and for their subsistence there; and the subsequent acts are all expressly in continuance of the same measures. And from all the acts, and the evidence in the case, the conclusion is, that the United States rejected the treaties and repudiated the reservations and measures of the commissioners, and substituted other reservations and measures, and provided for them and for them only.

Then it is said that the United States have surveyed and assumed title over the lands ceded by the Indians in the treaties made by the commissioners, and thus substantially affirmed the treaties. It is enough to say that it is a part of the case that all those treaties were rejected by the Senate, and never came into existence as a means of title or of claim of title; and whatever may have been the action of the United States, there is no reason shown for referring it to any claim of title founded on those rejected treaties.

It was argued for the petitioner that the relation of the United States to the Indians was analagous to that of guardian and ward at the common law, and that the supplies furnished to the Indians were thus in performance of legal obligations of the United States. If the analogy could be sustained, the argument founded on it was answered at the bar, that the obligation of a guardian was only to apply the ward's means to his support, and not to furnish means. But the analogy does not exist, for the relation of guardian and ward is a personal relation and cannot exist between nations, whose relations are by treaty and compact between themselves. The liability of a guardian for his ward's support rests on the fact that he holds all the ward's means of support; but the United States was not entitled to the rents

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or profits of the lands, or the goods and chattels of the Indian tribes or nations in California.

And upon the whole case we are of opinion that the United States are not legally liable upon the contract claimed upon, because it was not made by their authority, and has not been adopted by them.

Our decision is, that the petitioner has not established a title to the relief he prays for.

This decision of the court, it will be seen, decides only the question of its own jurisdiction. The facts constitute a claim upon the United States of a high order, but not of any class which the statutes creating the court confided to its jurisdiction. The decision is, "that the United States are not legally liable upon the contract claimed upon, because it was not made by their authority, and has not been adopted by them." This is not denied. The claim, whatever may have been urged in its favor before the court, was not a *legal* claim upon any valid contract with the United States, or its agents, acting within the scope of their powers. The whole class of these claimants were voluntary creditors of the United States, induced to become such by circumstances of the most controlling character. They had no security, except their confidence in the integrity and assurances of payment by the accredited officers of the government, and they trusted to these implicitly. They considered that there was no hazard in the venture, for they furnished subsistence to starving Indians, at a price which implied prompt payment, and actually received drafts upon the Commissioner of Indian Affairs, which, of course, were protested. The committee, however, in entertaining this case, upon grounds upon which it is competent alone for Congress to act, propose to treat it as a moral and equitable obligation of the United States, to reimburse those creditors, who have, it is believed, become so without any fault of their own. Undoubtedly their claim to the equitable consideration of Congress stands upon a very different footing to that of a legal contract. In the latter case, it would be enough to insist alone upon the performance of the contract; in the other, it is necessary to go further, and show the good faith of the parties, the justness of the consideration, and the public benefit of the service, in pursuance of some line of public policy. These points are fully established by the facts found by the court. A brief statement of a few controlling facts will make this clear.

In the acquisition of our Pacific possessions, the government of the United States has adopted new views and a new policy as to the title of the Indians to the soil. They are regarded only as occupants, and no treaty of purchase has been made with them. The government assumes a paternal relation towards them, and exercises over them full jurisdiction, imitating in this the wise policy of the Spanish mission system among them. The settlers of California, it is well known, paid no respect to the possessions of the Indians. The miners, penetrating the valleys and mountains in search of gold, successively drove the Indians from the haunts where they could obtain subsistence, until they sought the barren crests of the mountains. An irregular and predatory system of hostilities soon broke forth. It threatened extermination to the

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Indians. The United States could not have restored peace at the cost of millions. The policy of peace was wisely adopted. Treaties were made providing homes and subsistence for the Indians. To be effectual, it was necessary to execute them immediately, and it was done. Without homes or subsistence, they could not await the tedious delays of the ratification of the treaties. The treaties were never ratified, but peace was restored; the United States reaped all the advantages without the inconveniences attending the treaties; an expensive war was avoided, and a rapid and peaceful settlement promoted. These were certainly cardinal objects of public policy, effected at the expense of these claimants, and with their means. There was then effected and carried out a policy of a constitutional obligation of the government to maintain peace and preserve friendship with the Indians.

The United States has not adopted the very system inaugurated by those defunct treaties, but it has sanctioned its main features, that of providing homes and subsistence to the Indians, to a partial extent. The governmental reserve system offers homes and the means of subsistence to all who wish to labor, and thus exchange their mode of life for that of the white man. The committee believe that the United States have received great benefits from the means furnished by the claimants in aid of its policy, and in relief of its treasury, and there is no reason why it should not reimburse them with a just indemnity. In doing so, we invent no new principle, nor adopt any new policy. The United States has often repaid the expenses of the States in suppressing Indian hostilities. Had California undertaken the task of pacification of the Indians by a war, she would have been the creditor of the United States for the expenses of it. Does it lessen the obligation, that the more humane and peaceful policy of the Indian commission has effected the same object? Finally, the principle involved in the whole class of cases, of which this is only one, was distinctly recognized by Congress, in an act passed July 29, 1854, in favor of Colonel John C. Frémont, one of those who furnished beef to the Indians under contract with the commissioners, and by its provision he received near two hundred and forty thousand dollars. The same justice should be extended to all the other claimants. The interest in that case was allowed upon exceptional grounds, and in violation of the general rule. No circumstances in this case are shown, warranting us in following the precedent in favor of Frémont that far. The committee, therefore, report a bill for the amount only clearly and satisfactorily established before the Court of Claims.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 112.

IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1860.—Ordered to be printed.

Mr. WILKINSON made the following

REPORT.

[To accompany Bill S. 250.]

The Committee on Pensions, to whom was referred the petition of Kate D. Taylor, widow of Brevet Captain Oliver H. P. Taylor, praying for a pension, beg leave to report that they have had the same under consideration, and find:

That the husband of the petitioner was a cadet in 1842; brevet second lieutenant, dragoons, 1st July, 1846; brevet first lieutenant, "for gallant and meritorious conduct in New Mexico," 4th February, 1847; brevetted captain, September, 1852; killed in conflict with an overpowering band of Indians in Washington Territory, 17th May, 1858.

The petitioner has been allowed five years' half pay, at the rate of $26 66½ per month, as a widow of a first lieutenant of dragoons. She now prays the half pay of captain of dragoons, as her late husband was a brevet captain, and discharging the duties of a full captain at the time he received the wounds in the battle with the Indians, and from which he died, as above stated.

It appears that in the battle of the 17th May, 1858, between the United States forces under Colonel Steptoe and several tribes of Indians, and while Colonel Steptoe's command was in retreat, under the fierce and pressing pursuit of the Indians, "the difficult and dangerous duty was assigned to Captain Taylor and Lieutenant Gaston, of flanking the column; that in their heroic efforts thus to protect the main body from the swarming savages, they both fell covered with wounds and honor."

It also appears that the petitioner has been left to support her two infant, orphan children, and is destitute of means for their maintenance.

Your committee, after giving the case their careful attention, believe it to be a meritorious one, and therefore report a bill for her relief, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 113.

IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1860.—Ordered to be printed.

Mr. BAYARD submitted the following

REPORT.

The Committee on the Judiciary, to whom was referred a resolution of the Senate, directing them to inquire, and report whether the contracts heretofore made by the Secretary of the Senate with Mrs. Adeline Sergeant, and renewed, with modifications, on the 16 *and* 17*th of February,* 1860, *for binding the reserved numbers of Senate documents, are authorized by law, have had the same under consideration, and report:*

That by a joint order of the Senate and House of Representatives, made at the first session of the first Congress, all contracts for the printing and binding business, on the most reasonable terms, were intrusted to the Secretary of the Senate and the Clerk of the House. That the same joint order directed the acts of Congress and Journals of each House to be "distributed to the members of the legislative, to the executive, and judicial, and heads of departments of the government of the United States, and the executive, legislative, and judicial of the several States."

Frequent acts of Congress have been since passed in relation to the printing of copies of all documents ordered by either House, but no act in relation to the binding of what are recognized as the usual number, or reserved copies, has ever been passed.

Subsequently to the making of this joint order, the Senate has ordered the printing of such documents as it deemed necessary for its use, and the usual number has been prescribed by general orders; and where additional copies were deemed necessary, a special order authorizing the printing, and designating them as additional copies, has always been requisite. Of this usual number, at the close of each session a certain number has, by a usage which runs beyond the memory of man, arising probably under the joint order of the first Congress, been reserved; and copies of *all* documents so reserved, have been bound, and furnished by the Secretary to the different committee rooms, the Secretary's office, and one copy to each Senator of such documents as were ordered to be printed by the Senate during his term of office.

The printing, until the act of August 26, 1852, as well as the binding, has always been paid out of the contingent fund of the Senate, and in the absence of any act of Congress, or order of the Senate to

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the contrary, the Committee to Audit and Control the Contingent Expenses of the Senate, have authorized the binding of such number of reserved copies as were deemed requisite by it. These reserved copies, until the year 1849, were bound by the printers of the Senate for the time being, at the usual and customary prices under the superintendence of the Secretary of the Senate, by authority of the committee.

In the beginning of 1849, the Secretary, by the direction of the committee, after advertising for proposals for the binding of reserved numbers, on the 30th of May, 1849, made a contract with John Sergeant, for binding the reserved numbers for the 31st Congress. After the death of John Sergeant, a contract for binding the reserved numbers was, by the authority of the committee, made by the Secretary, with Adeline Sergeant, his widow, and on the 16th February last, the contract was continued with modifications, for binding the reserved copies, by the authority and with the approval of the committee.

The authority, therefore, of the Secretary to make the contracts specified in the resolution, necessarily depends upon the joint order of 1789, the usage under it, and the authority of the Committee on Contingent Expenses. A Committee to Audit and Control the Contingent Expenses of the Senate, was established by a rule of the Senate, adopted November 4, 1807.

It seems to admit of no doubt, that the Senate has full authority to have printed and bound such documents as may be by it deemed necessary and proper, in the absence of any restrictive law, and that such binding and printing forms part of its contingent expenses.

The authority given to the committee by the rule of 1807, is to control, as well as audit the contingent expenses of the Senate; and under that authority, the binding of reserved copies has been always done under the superintendence of the Secretary, by the directions of the committee: additional copies or extra numbers, stand upon a different footing. By a clause in the civil and diplomatic act, passed March 3, 1853, "additional copies," and additional copies alone, are directed to be bound under the direction of the respective committees on printing of each house, and at a price limited in the act. Previous to January, 1852, additional copies ordered by the Senate, had also been bound under the authority of the Committee on Contingent Expenses, though in a different and less perfect manner than the reserved copies. Congress must be presumed to have known the mode in which its binding was done previous to the passage of the joint resolution of January 27, 1852, which was applicable to the 32d Congress alone, and the law being made permanent in March, 1853, by a clause in the general appropriation bill, the inference seems reasonable that it was the intention of the legislature to sanction and continue the mode in which reserved documents had been previously bound. The authority of the Committee on Contingent Expenses, to authorize and direct the binding of reserved documents, if it ever could have been questioned before, existing as it did under a usage of nearly half a century, is implied in the regulation for binding "additional copies" made in 1853.

The implication becomes irresistible when regard is had to the provisions of the third section of the act passed March 3, 1859, making

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appropriation for the legislative, executive, and judicial expenses of the government.—(Stat. at Large, vol. 2, page 422.)

By the provisions of that section, the reserved copies are limited to 1,550, and it is further provided that "the reserved (regular) numbers shall be distributed by the officers of the house first ordering the printing of the same, to the same persons, and in the same manner, as such numbers heretofore ordered by both houses have been distributed."

Reserved numbers had always been distributed before the passage of that act, by the Secretary of the Senate, as previously stated, and in *bound* copies.

The committee, therefore, cannot doubt that the Secretary of the Senate had full authority, under the direction of the Committee to Audit and Control the Contingent Expenses of the Senate, to make the contracts with Mrs. Adeline Sergeant mentioned in the resolution of inquiry referred to them, the same having been made by him under the direction and with the approval of that committee.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 114.

IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1860.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Lemuel Worster, praying a pension on account of a disability incurred while employed as a waiter to a militia officer in the United States service, during the last war with Great Britain, having carefully examined the same, beg leave to report:

That said petition has been before Congress during several of the past sessions, and upon which favorable reports have been made, but upon examining carefully the evidence, your committee perceive that the petitioner prays a pension on account of disease contracted while employed as a *waiter* to an officer in the war of 1812; that during employment as aforesaid, he was taken sick of the "spotted, or camp fever," from the effects of which he has lost the sight of one eye entirely, the faculty of speech gone, that he is perfectly deaf, and all hopes of his usefulness or happiness in life utterly destroyed.

There is no evidence from the rolls to show that the petitioner was ever detailed as waiter, (according to the testimony he was then but twelve years of age,) nor is there any evidence before the committee showing the names of those officers, or other witnesses, who have given their affidavits in the case, were officers, or in a position to know the facts about which they testify.

The committee therefore recommend that the prayer of the petitioner be denied for the reasons above stated.

Your committee also state that the general statutes granting pensions do not recognize any claims of this character. It is a condition of the invalid pension system that its benefits shall be extended to those only who have been disabled by wounds or disease while in the line of their duty in the army or navy of the United States, and not to employés of officers or soldiers of the army. The petitioner was neither a volunteer or drafted soldier, but the servant of an officer. He was employed and paid to serve an individual and not the country. He incurred no privations or perils, and rendered no service or duty to the government. The committee would not recommend so wide a departure from the principles and policy of the pension system if the statements of the petitioner were fully proved. It would be a precedent for other civil pensions, which might soon create a system, which cannot now, probably, find a single advocate in the Senate.

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IN THE SENATE OF THE UNITED STATES.

MARCH 6, 1860.—Ordered to be printed.

Mr. NICHOLSON submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Catharine Lydia McLeod, only surviving child of Ebenezer Markham, a Canadian refugee, praying relief on account of the losses and sufferings of her father in aiding the cause of the American revolution, have agreed to the following report:

IN THE SENATE OF THE UNITED STATES, *April* 13, 1858.

The Committee on Revolutionary Claims, to whom was referred the petition of Catharine Lydia McLeod, only surviving heir of Ebenezer Markham, having had the same under consideration, beg leave to submit the following report:

The petitioner is the daughter and only surviving heir of Ebenezer Markham. That at the breaking out of the American revolution, her father was a merchant residing at Montreal, and warmly espoused the cause of the *rebels*, as they were called; that her father, in consequence, was seized and imprisoned for a long time, at various periods of the war; that after or during the struggle for independence, he removed to the United States and settled, first in New York, on a piece of land, 320 acres, given by the said State, which was poor and of little value; that he afterwards settled in Vermont, where he was sued for his old debts contracted while he resided in Canada, and imprisoned until his death, in 1818, as he was unable to pay.

The above is a summary of the facts stated in the petition. The evidence, though not very satisfactory, is perhaps the best which can now be produced. Your committee, heretofore, have been constrained to report against these antiquated claims. If the facts stated be true, the said Ebenezer Markham was treated with great severity by the enemy on account of his principles; but hundreds of others suffered as much in defense of civil liberty, and if the treasury should be opened to all who suffered in person and property during that memorable struggle for independence it would soon be empty. After a lapse of seventy-five years, your committee do not feel at liberty to recommend the petitioner's case to the favorable consideration of Congress, and therefore ask to be discharged from the further consideration of it.

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IN THE SENATE OF THE UNITED STATES.

MARCH 7, 1860.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 253.]

The Committee on Indian Affairs, to whom was referred the memorial of Wetonsaw, son of James Connor, have had the same under consideration, and beg leave to report as follows:

The memorialists, the legal representatives of Wetonsaw, son of James Connor, state, that in the treaty of 14th January, 1837, between the United States and the Saginaw band of Chippewa Indians, the sum of $400 was secured to said Wetonsaw, and paid by mistake to other parties. They claim payment of this amount, and the committee submit the letter of the Commissioner of Indian Affairs, hereto annexed, as a full and brief report of the facts.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, February 4, 1860.

SIR: I have the honor to acknowledge the receipt of the memorial to Congress of the legal representatives of Wetonsaw, son of James Connor, deceased, signed by Josiah Polk, attorney, &c., inclosed in your communication of the 24th ultimo, and in reference thereto, have to state as follows:

Under the Saginaw treaty of January 14, 1837, per schedule B, attached thereto, (see Statutes at Large, volume 7, page 532,) there was reserved for "Wetonsaw, son of James Connor, $400."

In the second quarter of 1856, Agent Gilbert paid the amount reserved to Wetonsaw to parties representing themselves to be the heirs of said Wetonsaw, living in Michigan. Subsequently it was ascertained, by investigation, through Agent Fitch, that the payment by Agent Gilbert was erroneously made, and that James Connor, jr., who died in Hamilton county, Indiana, some time in 1848, and on which estate William Connor and Hiram G. Fitch, of the county of Hamilton, in the State of Indiana, are the administrators, was the person mentioned as Wetonsaw, son of James Connor, in schedule B attached to the treaty of January 14, 1837.

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In view, then, of the above state of facts, this office would respectfully recommend that the prayer made in the memorial referred to should be granted.

The memorial referred to in the foregoing is herewith returned.

Very respectfully, your obedient servant,

A. B. GREENWOOD,
Commissioner.

Hon. W. K. SEBASTIAN,
Chairman Committee on Indian Affairs, U. S. Senate.



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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 117.

IN THE SENATE OF THE UNITED STATES.

MARCH 7, 1860.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of William G. Ridgely, have had the same under consideration, and thereupon report:

The petitioner "claims from the United States indemnity for property destroyed during the late war with Great Britain," this property consisting of tobacco stored in tobacco-warehouses in Prince George's and Charles counties, Maryland.

Your committee have given to the facts involved in this and other similar cases, commonly known as the "Maryland tobacco cases," and to the principles of law applicable to them, all the consideration which their character and magnitude require; and they beg leave to refer to their report, No. 175, 1st session, 35th Congress, for the reasons of their judgment thereon.

From these facts and principles, they think that the prayer of the petitioner ought not to be granted; and they recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be rejected.

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IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1860.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of the legal representatives of John G. Mackall, have had the same under consideration, and thereupon report:

The petitioners claim from the United States payment for a dwelling house and its appurtenant out-buildings, which belonged to John G. Mackall, in Calvert county, Maryland, and which the British forces destroyed in 1814; and they allege that it was burned in consequence of its "occupation by the American forces." This claim has been urged during the last forty-four years, either before the executive officers of the government or before Congress. It seems to have been one of the first cases presented under the act of April 9, 1816. [Stat. at Large, vol. 3, p. 261.]

The following is the letter of the Third Auditor to the committee of the House of Representatives of 1846, together with the statement and summary of the facts involved in the case, made by the Commissioner, Richard Bland Lee:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
February 6, 1846.

SIR: I have had the honor to receive your letter of the 3d instant, inclosing the petition and papers of James J. Mackall and others, heirs and representatives of Captain John G. Mackall, deceased, in which you say, "The Committee of Claims desire to know whether any information exists in your (this) office, and if so, that it be communicated, calculated to throw any light upon the merits of this claim." In reply, I have the honor to state that, on referring to the records and files of the office, it is found that a claim in the name of John G. Mackall, for the loss of a dwelling and other houses and property, said to have been destroyed by the British, in the year 1814, had been presented for payment or adjudication by the late Commissioner on Claims, Richard B. Lee, Esq., and that commissioners had been by him appointed in October, 1816, to take testimony in the case, who made

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their return early in December following, upon which Commissioner Lee made a statement of the evidence obtained, and a summary of the facts, and transmitted the papers to Congress on the 10th of December, 1817. These papers were subsequently, at my request, transferred from the files of that body to this office. It appears from the indorsements on the envelope of the papers, that they were referred on the 10th December, 1817, to the Committee on Claims; on the 17th of the same month, "report made, concurred in, and petition rejected;" December 18, 1857, subject reconsidered and committed to Committee Whole House on the report in the case of John J. Pattison; January 23, 1818, ordered to lie upon the table. I inclose herewith a copy of the statement of the evidence and summary of facts referred to above, which is all the information the records of this office have been found to afford on the subject. I have the honor to return the petition and papers.

Most respectfully, your obedient servant,

PETER HAGNER,
Auditor.

Hon. JOHN A. ROCKWELL,
House of Representatives.

CASE OF CAPTAIN JOHN G. MACKALL.

OFFICE OF CLAIMS, &c.,
Washington, December 10, 1817.

Captain John G. Mackall claims payment for a frame dwelling-house, kitchen, out-houses, furniture, and grain destroyed by the enemy near the Patuxent river, in Calvert county, Maryland, in consequence, as he alleges, of the dwelling-house having been in the military occupation of the United States, and he estimates the value of his property so destroyed, as follows:

Dwelling-house	$6,000
Kitchen and out-houses	1,000
Furniture	600
Grain	200
Total	$7,800

Statement of the evidence.

It appears by the depositions of Major Walker and Captain McWilliams, that on the 11th of June, 1814, they, with others, accompanied Lieutenant Neale of the United States army, (since deceased,) with dispatches to Commodore Barney, then blockaded by the enemy in St. Leonard's creek; that they crossed the Patuxent river and went to the claimant's house, where they procured horses, and then proceeded to the commodore; that on their way back they saw the claimant (who stated that he was from home on duty) and obtained his consent to their stopping at his houses and refreshing themselves; that finding on their reaching it, on account of the absence of some of their company, they could not recross the river that night, they lodged in said

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house; that on the following morning, when crossing the river, the the British barges were in sight and were making for the shore which they had just left, and fired at it several guns, and that Lieutenant Neale was dressed in uniform and wore his sword.

It appears by the depositions of Captain Gray and James Denton, a sergeant in the company he commanded, that on the 15th of June, 1814, the enemy ascended the Patuxent river in a schooner and fourteen or fifteen barges; that a part of the company, about sixty in number, was stationed within one hundred and fifty yards of the claimant's house for its protection; and Captain Gray and Sergeant Denton went to the house and found there a person by the name of Crane (now dead) who resided with the claimant in the capacity of a schoolmaster, and having informed him of the right of their visit, he objected to any opposition being made to the enemy, as they were too many in number for the captain's command, and required him and Sergeant Denton to leave the house, which after some persuasion they did, and retreated with said company; and that when they were at the claimant's house they were in full view of the enemy.

It appears by the deposition of George Posey, a member of Captain Gray's company, (after a statement of the fact of the company's having halted within one hundred and fifty yards of the claimant's house,) that on their retreat they were fired at by the enemy's troops.

It appears by the deposition of Edward Truman, that a few days after the burning of the claimant's houses, he saw Mr. Crane, who stated that he had been requested by the claimant to stay at his house and endeavor to protect it. That the British officer who first entered the house told him (Crane) it should not be burnt, but he was ordered to the river as a prisoner of war, and when he arrived there, an officer said to him he had seen some militia about the house, and it should be burnt, and then in his presence ordered a man to go and set fire to it.

It appears further by Sergeant Denton's deposition, that Crane told him that he (Crane) heard some British officers say the claimant's house was burnt in consequence of their seeing the militia at it.

It appears by the deposition of James Jones, that in August, 1814, he had a conversation with a British officer, respecting the burning the claimant's houses, in the course of which the officer said they were burnt in consequence of one of the British marines having been wounded near them, and that no other houses were burnt at the same time and on the same shore except Captain John Browne's.

It appears by the deposition of Dr. John Dare, that he was well acquainted with the claimant's buildings, and that they were worth, as he believes, the following sums, viz:

Dwelling-house	$4,500
Out-house	500
	5,000
And the materials remaining after destruction	50
	4,950

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And it appears by the deposition of the claimant, that he has received no compensation from any officer, or agent, or department of the government of the United States, for the destruction of his houses, and that he did not agree with any officer or agent of the government to run any risk on account of the use of the same in the public service, and that the testimony he has produced is the best he could obtain.

Summary of facts.

It appears that the claimant's house was occupied on the evening of the 11th of June, 1814, as quarters for a party under Lieutenant Neale, now deceased. That the next day, when crossing the river Patuxent from the house, this party was in view of the enemy, who fired upon the shore from their barges. Lieutenant Neale was in uniform.

It appears that a party of militia, on the 15th of June, 1814, the day of its destruction, took a position about one hundred and fifty yards from the house for the purpose of defending it; that the commanding officer, and another officer, went to the house and were seen there by the enemy; that the commander was persuaded by a person in custody of the house to leave it and make no resistance from the superior numbers of the enemy. It is also proved that the enemy declared that they burnt the claimant's houses, because they saw the militia at them, and because one of their marines had been wounded near them. It does not appear that any of the houses of the claimant except the dwelling-house, was ever occupied as barracks, and none as military deposits, and that the dwelling-house, on the day of its destruction was not so occupied, unless Congress shall deem it equitable to regard the appearance of the commander of the corps, stationed on the land for its defense on that day with one of his officers at the house in sight of the enemy, as such occupation. It is proved that the enemy made these circumstances a pretext for destroying the houses of the claimant. But if Congress shall be of opinion that the occupation of the dwelling-house of the claimant was such as to require indemnification, and shall confine themselves to the construction of the President of the law of 9th April, 1816, as stated in the case of Mrs. George Thompson's executor: "That consequential damage is not provided for;" his claim of redress must be limited to the actual value of said dwelling-house at the time of destruction, amounting, after deducting the value of the materials remaining, to the sum of $4,450. The estimate made by the claimant of all the damage sustained by him, amounts to $7,800.

All which is respectfully submitted,

RICHARD BLAND LEE, C. C.

Before referring to the proof submitted in support of the memorial, your committee deem it proper to advert to the principles of public law which the claim involves; to the Congressional and departmental action

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heretofore had in such cases; and particularly to the case of —— Catlett, claiming indemnity for tobacco destroyed at the same time in "*Magruder's warehouse.*"

Upon the termination of the war of 1812, Congress, to provide for the payment of private property taken for the public use, or destroyed by the enemy because of its use and occupation by the United States, passed the act of April 9, 1816.—(See Statutes at large, vol. –, p. —.)

Section 9 provided "that any person who, in the time aforesaid, has sustained damage by the destruction of his or her house or building by the enemy, while the same was occupied as a military deposit, under the authority of an officer or agent of the United States, shall be allowed and paid the amount of such damage: *Provided*, it shall appear that such occupation was the cause of its destruction."

Section 15 provided "that no claim authorized by this act shall be allowed or paid unless the same shall be exhibited within two years from the passing hereof."

The commissioner appointed to determine the claims to be presented under this act at once entered upon his duties, and the President of the United States, through the Secretary of War, instructed him as to the construction of the ninth section, above cited, as follows:—(See State Papers, vol. Claims, pp. 491, 691.)

"The ninth section of the act extends only to cases of destruction of property by the enemy which are justifiable by the laws of civilized warfare. The occupation of houses or buildings as places of military deposit, or by an armed force, must be continued up to the time of the destruction.

"That the occupation of houses or buildings by an armed force for a night, upon a march, is not within the meaning of the said section, unless within the immediate presence of the enemy.

"That no compensation, by way of interest, rent, or damage, can be allowed under the act for the time which elapses between the destruction of the property and the decision of the commissioner.

"That the act does not extend to the case of consequential injury, resulting from the destruction of houses or buildings under the ninth section.

"No compensation can therefore be allowed for the destruction of houses or buildings not occupied as a military deposit or by military force."

The commissioner had entered upon his duties about the first of June, 1816; the President's instructions are dated 21st October, 1816, and, on the 1st of November following, he directed the commissioner to suspend all decisions under this ninth section until further advised; and, on the 6th of December, 1816, the President sent to Congress the following special message:

"*To the Senate and House of Representatives of the United States:*

"The ninth section of the act passed at the last session of Congress 'to authorize the payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States, and for other purposes,' having received a construction giving it a scope of

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great and uncertain extent, I thought it proper that proceedings relative to claims under that part of the act should be suspended until Congress should have an opportunity of defining more precisely the cases contemplated by them. With that view, I now recommend the subject to their consideration. They will have an opportunity, at the same time, of considering how far the provisions of the act may be rendered more clear and precise in their import.

"JAMES MADISON."

(See State Papers, vol. Claims, p. 484.)

This message was referred to the House Committee on Claims, who reported (17th December, 1816,) "that the committee were decidedly of the opinion that the commissioner, appointed to carry the act into effect, had given and was still disposed to give to the law an extension of construction not contemplated by Congress at the time of its passage, and not warranted by its object." They notice cases of unwarranted adjudications, and lay down the rule that "a mere temporary occupation of the house for one night and a part of the next day by one or two companies of militia, cannot impart to the house even the character of barracks, but much less that of a military deposit."

These proceedings resulted in the passage of the act of 1817, the first section of which provided "that the ninth section of the act entitled 'An act authorizing the payment for property lost, captured, or destroyed by the enemy while in the military service of the United States, and for other purposes,' passed on the 9th of April, 1816, shall be construed to extend only to houses or other buildings occupied by an order of an officer or agent of the United States, as a place of deposit for military or naval stores, or as barracks for the military forces of the United States."

The expediency of continuing in force these two acts of 1816–17 was submitted to the House Committee on Claims, who reported against it, principally on the ground that frauds had been committed under them; and they were allowed to expire on the 18th April, 1818, the undetermined cases under them being referred to the Third Auditor.—(See State Papers, vol. Claims, p. 590.)

By the *act of 3d March*, 1825, claimants who had presented their claims under the provisions of the acts of 1816–17, but who had failed to obtain final action thereon, were authorized to present them to the Third Auditor, who was authorized to adjudicate and certify them for payment, *under the provisions of said acts.*

Your committee have made special reference to these acts, not only because those of 1816–17 were passed while the evils they were designed to relieve were fresh in the memory of Congress, but because they contain all the relief which Congress deemed it just to afford.

Throughout the fourteenth and fifteenth Congresses numerous applications were made for indemnity for property destroyed by the enemy, and the general views of Congress upon all such cases were frequently and unequivocally expressed.

Until 1821 the Committee on Claims of the House of Representatives had regarded the military occupation of houses, *up to the time of their destruction by the enemy*, as bringing them within the provisions

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of the act of 1816; but in that year, upon a full discussion of the principles involved, the House decided that the occupation of a house as barracks, even up to the time of its destruction, did not justify its destruction by the rules of civilized warfare, and therefore did not come within the law, except in cases where the destruction had been found necessary to dislodge the enemy.

This was found to have been in accordance with the usage during the late wars in Europe.

Not even public barracks were deemed legitimate objects of destruction after being evacuated.—(State Papers, vol. Claims, pp. 815, 816.)

Congress intended to provide payment for such losses only as were known to have happened according to the rules of civilized warfare, and for no others.—(State Papers, vol. Claims, p. 796.)

As one party would not have a right to put a prisoner to death on the ground that he had fought, or that when exchanged he might fight again, so he would not have the right to destroy private property either because it had been used or might again be used in the progress of the war.—(State Papers, vol. Claims, p. 796.)

From Reports of Committees of the Fourteenth Congress.

The course heretofore pursued by Congress inculcates that indemnity is due to all those whose losses have arisen from the acts of our own government, or those acting under its authority; while losses produced by the conduct of the enemy are to be classed under the unavoidable calamities of war, and do not entitle the sufferers to indemnification from government.—(State Papers, vol. Claims, p. 442.)

From Reports of Senate Committees.

The utmost extent to which Congress can safely go is to protect individuals against its own acts and their consequences. If a house be occupied by the troops of the country for military operations, it is thereby placed on a footing of any other military position, and may be justifiably destroyed by the enemy.—(23*d Cong.*, 1*st sess.*, *Rep. No.* 355.)

Where a building is occupied by our troops, who are dislodged by the enemy, and the latter take possession of it, and after occupying it for a time, on evacuating, destroy it, it comes within the principles established in similar cases.—(26*th Cong.*, 1*st sess.*, *R.* 146.)

The above opinion is reversed. The principles recognized in the general legislation of Congress for the adjustment of war claims, and the regulations for carrying those laws into effect, should be adhered to.—(26*th Cong.*, 1*st sess.*, *No.* 350.)

The liability of the government in such cases was ably discussed by Mr. Silas Wright, on the presentation of the petition of ——.—(*See* 27*th Cong.*, 2*d sess.*, *Rep.* 272.)

He says, "the rules of action in the decisions of these claims should be the general legislation and the allowances under it; to act otherwise would be to unsettle every case of a claim which has been heretofore settled under these laws, and, by taking the most liberal and latitudi-

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nous private law which has been passed as the settled rule and established precedent, invite all those whose claims have been rejected, or in whose favor partial awards have been made, to come again to Congress for a further allowance."

The principles established in the general legislation of the country, and to which the committee have determined to adhere in reference to these "war claims," are the following:

1st. The building must have been in the actual occupancy of the United States.

2d. It must have been so occupied "as a place of deposit for military or naval stores," "or as barracks for the military forces of the United States."

3d. The occupancy must have been by an order of an officer or agent of the United States.

4th. The occupancy must have continued to the time of the destruction.

5th. Such occupation must have been the cause of the destruction.

Each and every of these facts must be fully sustained, in order to bring any case within the rule, the absence of any one of them being decisive against it.

These principles cannot be safely extended as general principles, applicable to a state of war. The great mass of the claims of this character, arising during the war of 1812, have been settled, and finally disposed of under these laws, and upon these principles; and now to extend the rules of allowance to those who have neglected to avail themselves of the general legislation, and choose to rest upon the sympathy of Congress and special favor, would be most manifestly unjust. Great and salutary principles of general legislation for the settlement of classes of claims, are not to be varied or construed by occasional acts of a private character, in which a strict adherance to them may have been relaxed.

It was before the Senate—

2d session 25th Congress. Committee on Claims. Adverse report, and agreed to by the Senate.
3d session 25th Congress. Committee discharged.
1st session 26th Congress. Adverse report, and agreed to.
1st session 30th Congress. Bill reported.
1st session 31st Congress. No action.
1st session 32d Congress. Bill reported.
1st session 33d Congress. Bill passed.

It was before the House—

1st session 15th Congress. Committee on Claims. Adverse report, and agreed to.
2d session 23d Congress. Adverse report. Laid on the table
1st session 24th Congress. Adverse report. Laid on the table.
2d session 24th Congress. Adverse report. Laid on the table.
2d session 27th Congress. No action.
3d session 27th Congress. No action.
1st session 28th Congress. No action.
2d session 28th Congress. No action.

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1st session 29th Congress. Committee discharged. Laid on the table.

This committee beg leave to refer to their report, No. 175, 1st session 35th Congress, for their views upon this and similar claims. They report that, in their judgment, on a careful review of the facts in the case, and of the principles of public law applicable to them, the prayer of the petitioner ought not to be granted; and they recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be rejected.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 119.

IN THE SENATE OF THE UNITED STATES.

MARCH 7, 1860.—Ordered to be printed.

Mr. BROWN submitted the following

REPORT.

The Committee on the District of Columbia, to whom was referred the petition of James and Theodore Walter, asking the conveyance to them of certain lots in Washington city, report:

That the prayer of the petitioners ought not to be granted, for the reasons stated in the accompanying letter of the Commissioner of Public Buildings, which is appended as part of this report.

OFFICE COMMISSIONER OF PUBLIC BUILDINGS,
February 28, 1860.

SIR: The petition of James Walters, senior, and Theodore A. Walters, praying that lots 4 and 5 in square 116, in this city, may be conveyed to them, having been referred to this office for a statement of the facts in the case and the value of the lots, I respectfully inform you, that in the division of square 116, lots 4 and 5 were assigned to James M. Lingan, the original proprietor of the square, who conveyed them to the United States, January 1, 1808, and the title has ever since remained in the United States. In 1856, a number of lots were sold at public auction, and among them were the lots in question, which were struck off at seven and a quarter cents per square foot, but the purchaser refused to comply with the terms of sale because of the claims set up to the lots by the Messrs. Walters, who derived their title from Francis Godfrey, who does not pretend to make any show of title. Mr. Godfrey, like a great many others in the early history of the city, inclosed and cultivated lots belonging to the government without being disturbed. The streets had not been opened out to them, and as their occupancy could not impair the title of the government, there was no disposition manifested to interfere with them. If the prayer of the Messrs. Walters should be granted, I apprehend that it will be regarded as a precedent to authorize all persons who may, at any time, have occupied public lots, to apply to Congress for damages in having surrendered the lots when sold by the government.

The case of George Mattingly, referred to by the attorney of the Messrs. Walters, has no analogy to their case. Even in that, the government sustained a loss of several thousand dollars, and the passage of the bill for his relief is, in my judgment, rather to be ascribed to the

liberality of Congress than any just claim against the government. If you should wish the facts in the Mattingly case, you will please inform me, and I will furnish them to you.

Godfrey's deed to the Walters is a general warranty, and their recourse is against Godfrey. The lots are worth nine or ten cents a square foot.

I herewith return the petition and accompanying papers as requested.

Very respectfully, your obedient servant,

JNO. B. BLAKE,
Commissioner.

Hon. A. G. BROWN,
Chairman of Committee on District of Columbia, U. S. Senate.

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36th CONGRESS, 1st Session. } SENATE. { REP. COM. No. 120.

IN THE SENATE OF THE UNITED STATES.

MARCH 7, 1860.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of Hodges & Lansdale, have had the same under consideration, and thereupon report:

The petitioners claim indemnity from the United States for certain hogsheads of tobacco stored in warehouses at Magruder's and Nottingham in Prince George's county, at Hunting Creek and Lower Marlboro' in Calvert county, and at Benedict in Charles county, Maryland, which warehouses were burned by the British forces in 1814, in consequence, as is alleged, of the occupation of said warehouses by the American forces.

Your committee have carefully considered the facts involved in this and similar cases before it, arising out of the burning of the same warehouses, together with the principles of law applicable to them, (See R. No. 175, 1st sess. 35th Cong,) and they think the prayer of the petitioners ought not to be granted; and they recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioners be rejected.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 121.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1860.—Ordered to be printed.

Mr. SAULSBURY submitted the following

REPORT.

The Committee on Commerce, to whom was referred the petition of F. E. Hassler, administrator of the late F. R. Hassler, Superintendent of the Coast Survey, and of the works for the construction of standard weights and measures, praying remuneration for losses and expenses incurred by his father, beg leave to report:

That the committee are unanimously of the opinion that the application of the petitioner is without merit, and ought to be refused, and they refer to the following letter of the Secretary of the Treasury, dated February 17, 1860, addressed to the chairman of this committee, which they make a part of their report, as fully sustaining them in the opinion thus expressed.

TREASURY DEPARTMENT,
February 17, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, inclosing a "petition of F. E. Hassler, administrator of the late F. R. Hassler, Superintendent of the Coast Survey, and of the works for the construction of standards of weights and measures, praying remuneration for losses sustained by his father," and requesting to be furnished with any information which may be had in this department in relation to this case, and also with my own views in respect to the same.

Upon examination of the petition, it appears that Mr. Hassler grounds his claim upon the fact, alleged by him, that in 1832, and subsequent years, his father, as Superintendent of the Coast Survey and of weights and measures, received but $3,000 per annum, while the present superintendent is now paid for the same duties $6,000 per annum. The present superintendent is also superintendent of weights and measures, for which he receives no compensation, although Mr. Hassler would suggest that he receives $6,000 for services as Superintendent of Coast Survey only. Mr. Hassler, it is understood, claims

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the difference between $3,000 and $6,000 per annum, from 1832, the date at which the work on the survey was resumed.

It appears from a letter, dated March 27, 1837, during the incumbency of Mr. Woodbury as Secretary of the Treasury, that, in the act of March 3, 1837, the sum of $60,000 was appropriated for the survey of the coast of the United States, "including arrears of compensation and expenses of the superintendent, estimating his compensation at $3,000 per annum, and his expenses at the same rate, from August 2, 1832," &c., and under said act the President directed that F. R. Hassler, Superintendent of Coast Survey, be paid for arrears and compensation from the 2d of August, 1832, up to the 1st of April, 1837, at the rate of $6,000 per annum, deducting from the aggregate amount the annual sum of $4,500, heretofore paid him for services and expenses, and also deducting the additional allowance of $500 during the period it had been paid to him, which was only for the year 1835, and fixed the compensation of Mr. Hassler, from and after the 1st of April, 1837, at $6,000 per annum, for compensation and expenses for all his services as Superintendent of both the Survey and the weights and measures.

On the 3d of June, 1843, during the incumbency of Mr. Spencer, a letter was written organizing the survey according to a plan submitted by a board organized by the President, in which Mr. Hassler's compensation was stated at $6,000 per annum—at which rate he was paid up to the day of his death.

It thus appearing that the compensation of Mr. Hassler from the date of the reorganization of the survey, was $6,000 per annum, the same compensation as is now paid the present superintendent, the department is of opinion that there is no just ground for the allowance of the claim of Mr. Hassler.

The petition is herewith returned.

I am, very respectfully,
HOWELL COBB,
Secretary of the Treasury.

Hon. C. C. CLAY, JR.,
Chairman Committee on Commerce, U. S. Senate.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 122.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1860.—Ordered to be printed.

Mr. BENJAMIN submitted the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of William Petchaka, only surviving child of Elizabeth Petchaka, praying for relief in relation to a grant of three hundred and twenty acres of land, report:

That by the seventh section of the treaty with the Delaware Indians, made on the 3d October, 1818, one half section of land was granted to Elizabeth Petchaka, the mother of petitioner.—(7 Statutes at Large, p. 188.)

On the 6th February, 1839, Congress satisfied said grant, by giving permission to Jean B. Valeé, as assignee of said Elizabeth, to locate said half section of land in Missouri.—(6 Statutes, p. 747.)

The mother of petitioner having assigned her right, and said assignment having been recognized by Congress, there remains no basis for the claim of petitioner, and this adverse report is accordingly made.

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IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1860.—Ordered to be printed.

Mr. JOHNSON, of Arkansas, made the following

REPORT.

[To accompany Bill S. 255.]

The Committee on Public Lands, to whom was referred the petition of Elias Yulee, late receiver of public moneys at Olympia, Washington Territory, have reëxamined the same, and now report:

The fourth and fifth sections of an act approved September 27, 1850, provided for donations of public lands to such persons as shall be residents of Oregon Territory, as then constituted, on the 1st of December thereafter, and also to such as should migrate thither within three years from that date, upon condition of actual occupation and improvement during a term of four years.—(Statutes at Large, vol. 9, pp. 497 and 498.)

The provisions of this act were extended and continued in force until the 1st of December, 1855, by the act of February 14, 1853, section fifth; and, at the same time, so amended as to allow the settlers to pay for their lands, at the price of one dollar and twenty-five cents per acre, after occupation for two years.—(Statutes at Large, vol. 10, p. 158.)

The whole duty of hearing applications, adjudicating controversies, and receiving payment for lands, under these two acts, was devolved on the surveyor general of Oregon; and, for that reason, special provisions were made for his compensation. The act of September 27, 1850, appointed him a salary of $2,500 *per annum*, together with $4,000 for "clerk hire" in his office, and $1,000 *per annum* for office rent, fuel, books, stationery, and other incidental expenses. The act of February 14, 1853, allowed him two *per centum* on all moneys received, as a compensation for the additional labor and responsibility which it imposed; the same to "include the payment for clerk hire, together with all costs and expenses *incidental to such special services* in any one year." The act provided, also, that "the salary and percentage of said surveyor general, *and for clerk hire*, shall not exceed four thousand dollars for any one year.

It thus appears that, in addition to his annual salary and to the ordinary expenses of his office for clerk-hire, rent, fuel, and the like, Congress allowed the surveyor general a special compensation for the services to be performed under the act of February 14, 1853, just quoted.

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The same act (section sixth) required every claimant of lands donated under the fourth section of the act approved September 27, 1850, to file a notice of his claim with the surveyor general on or before the 1st of December, 1853, and every claimant of lands under the fifth section of the same act to file a similar notice on or before the 1st of April, 1855, or else, in either case, to forfeit the claim.

The provisions of the acts of 1850 and 1853 were extended, by the act of July 17, 1854, to *all* the lands in Oregon and Washington Territories, (as well those east as those west of the Cascade mountains,) and so were the provisions of the general act, approved September 4, 1841, allowing rights of preëmption. That act of 1854 established two land offices, one for Oregon and one for Washington, and authorized the appointment of a register and a receiver at each; devolving upon them such duties and responsibilities as had been devolved upon the surveyor general of Oregon by the several acts already mentioned. The act of 1854, section sixth, fixes the compensation of each register and each receiver at $2,500 *per annum*, and office rent; but forbids them all "fees or other emoluments of any kind whatsoever," except the receiver's actual and necessary expenses in making deposits. (Statutes at Large, vol. 10, p. 306.)

It appears that the land office for Washington Territory (at Olympia) was not opened for the transaction of business until the 1st of January, 1855, although, on the 15th of November, 1854, the surveyor general of Oregon published an advertisement that, after the first of December, 1854, he would receive no further notices, or applications, or proofs, under the several acts of Congress heretofore recited. The petitioner alleges that he was actually engaged (with the register) during the months of November and December, 1854, in the examination of cases and papers transferred by the surveyor general, and in otherwise preparing for the convenient transaction of business with new applicants; and that these duties required the assistance of a clerk in his office. This question of fact the committee cannot properly determine; but leaves it, with other questions of mere detail, to the decision of the executive department.

It appears, also, that the gentleman (Mr. Hurd) employed as clerk in the receiver's office at $125 per month was employed in the register's office as a laborer, during the same time, or for a considerable period. The petitioner admits this, but alleges (first) that Mr. Hurd actually performed full service in both capacities, and (second) that his double employment was on account of the scarcity of laborers at Olympia. If the fact be so, the government derived an advantage from Mr. Hurd's employment as laborer and as clerk at the same time; and, this being an exceptional case, the committee waives what would otherwise constitute an objection.

Recalling the fact that all notices of claims under the fifth section of the act approved September 27, 1850, and its extension for two years by the act of February 14, 1853, were to be presented or or before the 1st of April, 1855, we can easily understand why the land office at Olympia was overcharged with business, to an extraordinary degree, during the first six or even twelve months. That such was the case in reality, has been sufficiently proved by the late governor and the

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late chief justice of Washington Territory, as well as by the correspondence on file in the General Land Office.

If, when the duties and responsibilities imposed on the surveyor general of Oregon, by the acts of September 27, 1850, and February 14, 1853, were transferred to the registers and receivers of the land offices in Oregon and Washington, a special allowance had also been made for the hire of clerks, or if those registers and receivers had not been forbidden to accept the usual fees or emolument, the case of Mr. Yulee would, nevertheless, have resembled many other cases in which Congress (whether wisely or unwisely) has extended particular relief. By the seventh section of the miscellaneous appropriation act, approved August 18, 1856, a general and permanent provision is made for such cases in future. (Statute at Large, vol. 11, page 91.)

But the special features of this case were considered by Congress in the case of the registers of the land offices at Oregon City and Winchester; and by the act of June 5, 1858, provision was made to reimburse those officers "for expenses incurred by them in the employment of clerks actually required for the transaction of the business of their respective offices" on account of the acts of September 27, 1850, and February 14, 1853. (Statutes at Large, vol. 11, page 310.)

The committee report a bill in accordance with that precedent.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 124.

IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 256.]

The Committee on Private Land Claims, to whom was referred the petition of Thomas L. Disharoon, have the honor to report:

That they find the facts fully and correctly set forth in the following report, made in the House of Representatives, in the third session of the Thirty-Fourth Congress:

IN THE HOUSE OF REPRESENTATIVES, *January* 24, 1857.

The Committee on Private Land Claims, to whom was referred the petition of Thomas L. Disharoon, of St. Louis, Missouri, have had the same under consideration, and respectfully report:

It appears, from the evidence produced before your committee, that the petitioner holds four certain land warrants, one in the name of George Branch, issued under the act of February 11, 1847; one in the name of Louis Pinellot; one in favor of James Callaway; one in favor of Henry Willis, issued February 2, 1849, for one hundred and sixty acres each. It appears, further, from the evidence submitted to your committee, that the petitioner, in good faith, before said warrants issued, bought the right and claim of said warrantees, and took powers of attorney from them, respectively, authorizing him to receive and transfer and dispose of said land warrants when issued; that said petitioner was an aged and infirm man, ignorant of the law touching land warrants; and that he was advised, and believed that he could, in the manner above named, get a right and title to said warrants, and so bought and paid a fair price for them; and has, under his said powers of attorney, received said warrants, and has them now in his possession. The warrantees named in said warrants have gone to parts unknown, and consider, doubtless, that said Disharoon is, in law, owner of said warrants, as your committee think he is in equity; and it is morally impossible that they can be found to get their assignments on the same, as the law requires, in order to pass the *legal* title.

Your committee consider that the case of the petitioner is a very hard one; it appearing, in addition to the facts above stated, that after

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he bought and paid for said bounty land claims he went to California, where he contracted disease in the efforts he made to provide a competency for his family and a maintenance for himself; that he is now blind, and has a young and dependent family looking to him for a support.

Under all the circumstances, your committee think the rigid rule of the law should be relaxed in this particular case, especially as it appears that the petitioner is an honest industrious citizen and no mere speculator, and that he can be relieved from great hardship and suffering without any injury to the government or third persons, the prayer of his petition ought to be granted, and the title of said land warrants vested in him, and that he be authorized to locate or dispose of said warrants; and for that purpose report the accompanying bill and recommend its passage.

The committee, therefore, report a bill in favor of petitioner, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1860.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 259.]

The Committee on Foreign Relations, to whom were referred the petitions of William K. Jennings and Aphia Jennings, Henry A. Wise, Ann Robinson, Edward Rudd, Mary Martin, and Benjamin Hodges, severally asking compensation for slaves taken and carried away by the British during the war of 1812, *out of the fund provided for under the first article of the treaty of Ghent, having had the same under consideration, respectfully report:*

That, from the testimony accompanying the petition of William K. Jennings and Aphia Jennings, it appears that, some time during the late war with Great Britain, while the enemy's fleet was lying in the Chesapeake bay, a negro man, Sam, aged about twenty-one years, the property of William Bean, the father of the petitioner, Aphia Jennings, and a negro woman, Easter, the property of Sarah Almond, escaped from the possession of their said owners, in the county of Elizabeth City, in the State of Virginia, and were carried off by the said fleet, and were never afterwards recovered. That the said Sarah Almond was the sister of said William Bean, and died intestate and without issue in his lifetime, leaving him her only heir-at-law. That the said William Bean has since died, leaving his daughter, Aphia Jennings, his only heir-at-law; and, further, that the belief that the fund provided for such cases had all been exhausted, has hitherto prevented an application for relief in this case.

In the case of Henry A. Wise, it is shown by the evidence filed that, in the fall of 1814, a negro man, Nelson, aged about nineteen years, previously allotted to the petitioner in the division of his father's estate, ran away to the British fleet, then lying near Tangier island, in the Chesapeake bay, and was carried away on board of the Dragon, 74, and in the latter part of January, 1815, landed on Cumberland island, on the southeastern coast of Georgia, placed in one of

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the colored regiments, and never returned to his owner. As a reason for the delay in presenting this claim, the petitioner states that he was but eight years of age at the time of the escape of said slave, that his first guardian, John Cropper, died in the year 1821, before any distribution of pay for deported slaves was made by the commissioners under the treaty of Ghent; and that his second guardian, John Custis, was not informed of the loss of said slave until it was too late to have it acted upon by the commissioners.

In the case of Ann Robinson, it is shown by the evidence that on the day of the memorable action at Hampton, Virginia, in June, 1813, a negro man, Hampton, the property of the petitioner's husband, Henry Robinson, was forcibly taken from the possession of said Henry Robinson, in the county of Elizabeth City, Virginia, and carried on board of the British ships then lying in Hampton roads, and has never been returned. That, under the will of her said husband, Henry Robinson, (a copy of which is filed with the petition,) she is entitled, as residuary legatee, to whatever compensation may be allowed for said slave. And the petitioner further states that she was not aware until recently that any provision had ever been made for the payment of such claims.

In the case of Edward Rudd, the testimony shows that the petitioner is the son and heir of Edward Rudd, deceased, late of Elizabeth City county, Virginia. That some time during the late war with Great Britain, while the enemy's ships were lying in Hampton roads, six slaves—a negro man, Stepney, a negro woman, Crinner, and four children—were taken from the possession of the petitioner's father, and carried off by the British, and have never been returned.

In the case of Mary Martin, it appears from the testimony that, in the year 1813, during the late war with Great Britain, a negro man named Ned, the property of her former husband, Robert Lindsay, was captured by the enemy and carried away from the possession of his owner, then residing in Charleston, South Carolina, and never afterwards recovered. And in the case of Benjamin Hodges, it appears that the negro man Phil, belonging to the husband of the petitioner, was taken off by the British army on its return from Washington city to the fleet then lying in the Patuxant; and that the owner of said slave has never regained him.

It appears from Ex. Doc. No. 122, accompanying a letter from the President of the United States to the House of Representatives, dated March 8, 1826, that the average value of the slaves taken and carried away by the British from the State of Virginia, as agreed upon and fixed by the commission appointed under the award of the Emperor of Russia, was $280 each, and those taken from the State of South Carolina at $390 each. It further appears, from a certificate of the Register of the Treasury, dated February 26, 1852, "that the balance unpaid of the fund received of Great Britain, under the first article of the treaty of Ghent, amounts to $4,112 89," and upon recent inquiry at the Treasury Department, the committee have ascertained that that amount still remains unexpected.

Balance in the treasury of the fund received from Great Britain as

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indemnity for slaves taken and carried away by the British in the war of 1812, per Register's certificate.....		$4,112 89
Of which this bill provides the following payments, viz:		
To William K. Jennings and wife, for four slaves, at $280.....	$1,120	
To Henry A. Wise, for one slave.....	280	
To Ann Robinson, for one slave.....	280	
To Edward Rudd, for six slaves, at $280.....	1,680	
To Robert Lindsay's representatives, for one slave...	390	
	3,750	
To Benjamin Hodges.....	280	
		4,030 00
Leaving still unexpended.....		$82 89

From two several letters emanating from the Department of State, one dated February 24, 1852, and the other June 26, 1854, it appears that none of the above-named petitioners have ever received any compensation for the slaves taken and carried away as above stated.

Your committee report a bill in conformity with the above state of the case, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES

MARCH 8, 1860.—Ordered to be printed.

Mr. SAULSBURY made the following

REPORT.

[To accompany Joint Resolution S. 6.]

The Committee on Commerce, to whom was referred the "bill in relation to the Louisville and Portland canal," and also the "joint resolution authorizing the enlargement of, and construction of a branch to, the Louisville and Portland canal," beg leave to report:

That said canal was constructed under a charter from the State of Kentucky, granted in 1825, and was completed in December, 1830, at a cost of $1,019,277 09. That the capital stock of said company is divided into 10,000 shares, of $100 each. That the United States, by subscription, are entitled to 2,902 of these shares, which cost the government the sum of $233,500. That upon these shares the government has received, as dividends, the sum of $257,778, a sum greater than the original cost of the shares owned by it. By an act of the legislature of the State of Kentucky, passed in February, 1842, the president and directors of said company were authorized to sell out the stock held by individuals to the United States, the State of Kentucky, or the city of Louisville; or, further, to appropriate the net income of the canal to the purchase of stock belonging to individuals, instead of making dividends therewith; the shares so purchased to be held in trust by said directors until the whole belonging to others than the United States should be liquidated; and when all the shares should be so purchased, the same should be transferred to the United States, upon condition that the government should levy tolls only sufficient to keep the canal in repairs and pay all necessary superintendence, custody, and expenses, and make all necessary improvements, so as to fully answer the purposes of its establishment; and, further, to protect the interests of commerce.

The directors have, as it appears, under the authority of said act, purchased, and now hold in trust, 7,093 shares of the capital stock of said company, which, with the shares owned by the United States and five shares held by the directors, individually, complete the full number of the shares in the capital stock of the said company.

It appears to the committee that the enlargement of the canal and the construction of a branch thereof, as contemplated in the proposed joint resolution, would be of great commercial advantage; and as the

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proposed improvement will not and cannot, under the amendment to said resolution which the committee propose, subject the general government to any expenditure of money, or legal or equitable liability on account thereof, the committee respectfully report back said proposed joint resolution, with an amendment, and recommend its adoption; and ask to be discharged from the further consideration of the bill referred to them in reference to the same subject.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 127.

IN THE SENATE OF THE UNITED STATES.

MARCH 9, 1860.—Ordered to be printed.

Mr. DURKEE made the following

REPORT.

[To accompany Bill S. 263.]

The Committee on Revolutionary Claims, to whom was referred the memorial of Haym M. Salomon, for indemnity for advances of money made by his father during the revolutionary war, have had the same under consideration, and respectfully report:

1st. The claim of the memorialist is one of peculiar and decided merit, and such as to demand the most favorable consideration of Congress. It is for losses sustained by money advanced to sustain the revolutionary struggle, when public credit was bankrupt and worthless, and to support the patriots who devoted their lives and energies to securing our liberties, when all other resources had failed them; all of which is well sustained by the most conclusive proofs, adduced before your committee.

2d. During the first session of the Thirtieth Congress the Committee on Revolutionary Claims in the House of Representatives, consisting of Messrs. King of Massachusetts, Smart of Maine, Outlaw of North Carolina, Morris of Ohio, Butler of Pennsylvania, Iverson of Georgia, Newell of New Jersey, Tallmadge of New York, Bowden of Alabama, to whom the House had referred a memorial similar to that which has been laid before this committee on behalf of Haym M. Salomon, a native of Philadelphia, son and legal representative of the late Haym Salomon, merchant and banker there, carefully inquired into the allegations of the petitioner, and unanimously agreed to a report, from which the following is an extract:

"That they have fully examined the mass of documentary evidence submitted by the said memorialist, and having satisfied themselves of its authenticity, do regard it as sustaining the claim advanced by the memorialist, which they therefore recommend to the favorable consideration of the House of Representatives."—Report No. 504.

During the first session of the Twenty-ninth Congress, the Committee on Claims in the Senate, consisting of Messrs. Pennybacker of Virginia, Morehead of Kentucky, Clayton of Delaware, Johnson of Maryland, Dickinson of New York, unanimously agreed to a report similar to that adopted by the House Committee, but too late for presentation. During the second session another report was drawn up by Senator Bradbury, placed on file, and is mainly as follows:

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"That it appears from documentary evidence submitted by the memorialist that Haym Salomon, his father, contributed largely of his pecuniary means towards carrying on the war of the revolution, aiding the public treasury by frequent loans of moneys, and advancing liberally of his means to sustain many of the public men engaged in the struggle for independence, at a time when the sinews of war were essential to success. It further appears to be satisfactorily established that the confidence of Mr. Salomon was so great in the good faith of this government that he parted with his money, relying on that good faith for its return.

"He died suddenly, after the conclusion of peace, and the inventory of the estate contains a list of treasury and other evidences of indebtedness of the government of a very large amount, viz:

Loan office certificates	$110,233 63
Treasury certificates	18,244 88
Continental liquidated dollars	199,214 45
Commissioners' certificates	17,870 37
Virginia State certificates	8,166 00
	353,729 43

The fact that the father of the memorialist held *bona fide* the above amount of revolutionary paper and securities, is clearly proved by the sworn statement of the register of the probate court of the city of Philadelphia, before your committee.

3d. In addition to the above amount of revolutionary paper, at par value, held by the father of the memorialist, it is proved to the satisfaction of your committee that Haym Salomon advanced large sums of money in specie to the financial agents of the revolutionary government; that he aided the honorable Superintendent of Finance, Robert Morris, with specie, advanced in various sums and at times of great public need, to an amount exceeding $200,000; this fact is proved by the original checks and drafts on the Bank of North America, drawn by Mr. Salomon payable to the "Superintendent of Finance," and paid at this bank; the checks themselves are before your committee, and bear verity upon their face, and are clearly proved by the cashier of the bank, as will presently be shown.

4th. It is also in proof, before your committee, that the father of your memorialist supported from his private means many of the most distinguished men of the revolution, who devoted their lives and energies to the cause of liberty, when all other means of support and resources were exhausted.

His vast pecuniary resources, exhibited to this committee through extracts from the ledger of the first bank, were entirely devoted to the use of the revolutionary government, were in the end thus jeopardized by his sudden demise, and finally lost to his widow and family.

Among the men of the revolution whom he freely aided while they were discharging important public trusts, your committee find the names of Thomas Jefferson, (Secretary of State to Washington, and twice President;) James Madison, (twice President;) Arthur Lee,

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(embassador to France;) Baron Steuben, (inspector general of the whole continental army;) General Mifflin, (governor of Pennsylvania;) General St. Clair, (one of the best commanders;) Colonel Bland, (M. C., agent of Virginia;) J. F. Mercer, (delegate of Virginia;) Joseph Jones, (delegat eof Virginia, and uncle of James Monroe;) James Wilson, (signer of Delaration of Independence, one of the principal framers of the present Constitution, and first judge appointed by Washington;) Robert Morris, (superintendent of finance,) &c.

Moneys to the amount of many thousand dollars were thus advanced, the original, uncanceled vouchers for which are now before your committee, bearing the authentic and well-recognized signatures of the persons who received them.

5th. There is also in proof before your committee the original receipts of M. Hillegos, continental treasurer, to Haym Salomon, for six of his promissory notes, to the amount of £34,758 11*s*. 2*d*., Pennsylvania currency, or ninety-two thousand six hundred-and-odd dollars, federal currency. This document shows that the whole amount was received for the benefit of the United States, and was to be so accounted for.

6th. It is also proved before your committee, by the production of the original orders and checks, that Haym Salomon sustained, from his private resources, Don Francisco Rendon, the secret embassador of Charles III, of Spain, who was in secret alliance with the revolutionary government. Thirty-odd original orders on Mr. Salomon, and his checks on the bank for the respective amounts, are before this committee, which were never canceled, or the orders would have been surrendered. This was done at a time when the supplies of the Spanish embassador were cut off by the activity of the British cruisers, and his funds could not reach him from home.

In a letter of Don Francisco Rendon to the governor general of Cuba, Don José Marie de Navarra, 1783, he says: "Mr. Salomon has advanced the money for the service of his most Catholic Majesty, and I am indebted to his friendship, in this particular, for the support of my character as his most Catholic Majesty's agent here, with any degree of credit or reputation; and without it, I would not have been able to render that protection and assistance to his Majesty's subjects which his Majesty enjoins and my duty requires." Moneys thus advanced, to the amount of about 10,000 Spanish dollars, remained unpaid when Mr. Salomon died shortly after.

7th. Not less distinct, as well as grateful in tone, were some of the men of the revolution in speaking of the bounties received from Mr. Salomon.

Mr. Madison, addressing his colleagues, Messrs. Randolph and Jones, while he was in the Revolutionary Congress, 1780 to 1783, says:

1. "The expediency of drawing bills on funds in Virginia, even the most unquestionable, has been tried by us in vain."

2. "I am fast relapsing into pecuniary distress. The case of my brethren is equally alarming."

3. "I have been a pensioner for some time on the favor of Mr. Haym Salomon."

4. "I am almost ashamed to reiterate my wants so incessantly to you. The kindness of our friend in Front street, near the coffee-house,

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(Haym Salomon,) is a fund that will preserve me from extremities; but I never resort to it without great mortification, as he obstinately rejects all recompense. 'To necessitous delegates he always spares them supplies."

In 1781, Mr. Morris, superintendent of finance, wrote the president of Congress, that "the treasury was so much in arrears to the servants in the public offices, that many of them could not, without payment, perform their duties, but must have gone to jail for debts they have contracted to enable them to live."

It was at a crisis like this that Mr. Salomon aided the government and members of Congress, without any security, trusting in the honor of the American people when independence should have been secured.

8th. Omitting the item last above named as not an advance directly to our own government or public men, the evidence shows that Mr. Salomon advanced to the government a sum exceeding $400,000, independent of the amounts advanced to the various distinguished men and patriots of the revolution, who, as stated by Robert Morris, in his report on the subject, must have gone to jail for debts contracted to live, had they not been thus relieved, and to which uncomputed amount may also be added a note for $20,000, loaned to Robert Morris, the original of which is before your committee, and bears unmistakable evidence of having been paid by Mr. Salomon, but never accounted for or canceled by the government. These items, taken together, make an aggregate exceeding, as stated, the sum of $400,000, which was certainly expended or advanced by Haym Salomon in direct support of the revolutionary cause. As before stated, it is proved to the entire satisfaction of your committee that the father of the memorialist held government obligations, consisting of five different species, as above shown, to the amount of $353,729 43. This added to the amount last above named would constitute a gross sum of near $800,000; but the memorial does not claim this amount, but is willing to concede, as your committee believes to be true, that the public securities held by the father of the memorialist, represented to the extent they go, the larger sum shown to have been advanced for the use of the government, and only asks to be indemnified to the extent of the public securities thus held, and is willing to relinquish all other demands, which your committee think is the least that can be honorably or justly tendered the memorialist at this time.

9th. Your committee, in order to be satisfied how far payments of the whole, or any part of these advances or government obligations, have had brought before them a full exemplification of all the revolutionary expenditures and payments anterior to the formation of the present government, but do not find that there is any evidence of such payments having been made to the father of the memorialist, or to his heirs or legal representatives after his death.

10th. The accounts rendered by the Superintendent of Finance, have been carefully examined, and no discharge of any of these obligations can be found.

11th. A like search has been made in the private accounts of Robert Morris, as stated upon his oath while incarcerated for debt in the year

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1805, but no evidence can be found of any payments to, or charges against Haym Salomon, in any way.

12th. Your committee have next directed their inquiries to whether any payments, or liquidation of these public securities, have been made since the formation of the present government. But it is fully proved to your committee that no such payment was made; this fact is conclusively shown by the questions addressed to the First Auditor of the Treasury Department in the following words:

THOS. L. SMITH, Esq.,
First Auditor of the Treasury Department of United States:

SIR: Please be good enough to answer simply yea or nay, to the following questions, arising out of the case of Mr. H. M. Salomon, now before the Committee on Revolutionary Claims, of which I am chairman.

C. SAWTELLE,
Chairman.

First question.—Can you find that any of the annexed described paper was funded (after the present government was established) by Rachel Salomon, relict of Haym Salomon, or by either of the children of Haym Salomon, viz: Ezekiel Salomon, Sarah Salomon, Deborah Salomon, or Haym M. Salomon?

Second question.—Can you find whether any of said revolutionary paper was ever funded or paid to Thomas Fitzsimmon, M. Clarkson, J. Carson, or E. Levy, administrators of Haym Salomon?

Third question.—Can you find that said Rachel Salomon, relict, or any of the children of Haym Salomon, ever funded any kind of revolutionary paper at all, or any number or amount, after the new government was established in 1789?

Fourth question.—Can you find that the above revolutionary paper, left by Haym Salomon, was ever funded or paid to any person or persons at all, after the adoption of the present Constitution?

To this letter the First Auditor, after making a thorough examination of the archives of his department, responded as follows:

TREASURY DEPARTMENT,
First Auditor's Office, March 25, 1850.

SIR: I am in receipt of your letter without date, proposing the four following questions, requesting me to answer simply yea or nay.

(The questions are here inserted, as in the original.)

In reply, I have the honor to state that, after a careful search through more than ten thousand pages of records of funded certificates of revolutionary debt, being the entire series of said records, page by page, (for they do not appear to have made indexes previous to the present century,) I have to give a negative answer to each and all of your inquiries, which I accordingly hereby do.

Your letter and the accompanying verified schedule of certificates are herewith returned.

Very respectfully, your obedient servant,

T. L. SMITH, *Auditor.*

Hon. C. SAWTELLE, *House of Representatives.*

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13th. There being no payment, as shown by these accounts before your committee of the Superintendent of Finance, before Mr. Salomon's death, nor up to the formation of the present government, and none since the present government was established, as is above shown, it follows necessarily that the government of the United States owe both indemnification and gratitude to the heirs of Haym Salomon, who deserves to rank among the first of patriots and benefactors, and that his heirs are fully entitled to the measure of the indemnity asked.

14th. It is proved to the satisfaction of your committee that Haym Salomon died soon after the acknowledgment of our independence by England, when no steps had been taken to liquidate the heavy debts due the memorialist's father. By a letter written to his chief clerk, a short time previous to his death, speaking of his decline of health and withdrawing from business, he says: "*The public securities I have, being considerable, (some* $355,000,) *I wish to make inquiry what could be done with them; and another method I propose is, by lending them on the best terms, on bond and mortgage, taking them for the whole nominal value of the papers.*" This letter, written, as we might say, by a dying patriot and public benefactor, shows he had full confidence in the good faith of the government and people he had served with the bestowal of his whole pecuniary substance up to the hour of his death: which, your committee are free to say, a prosperous country, enjoyed by a grateful posterity, should not permit to be falsified.

15th. It is made satisfactory to your committee that the widow and children of Haym Salomon have never received any benefit whatever from the indebtedness of the government to their father. At the time of his death they were all infants, the eldest less than seven, and the youngest, the present memorialist, but a few weeks old. Their mother was young and a foreigner, not at all familiar with the means of protecting herself and her childrens' rights. Of the *five* administrators appointed, but two ever filed any account, and that but for a small portion of the estate; but no part of the public securities held by their father at the time of his death were ever reached by his widow or children. The eldest member of the family, Ezekiel Salomon, who took charge of the matter for his mother, when of age, died a few years after away from home, when the present memorialist took the case in hand, and has steadily and diligently pursued it, since the year 1827, up to the present time. Though delayed by the loss and misplacing of important papers, of which there is abundant proof, he has steadily sought to secure his rights. Much interesting and important correspondence with the most distinguished men best versed in the revolutionary history of the country, showing a united concurrence in the merits of the claim of the memorialists, is before your committee—Jared Sparks, Henry Wheaton, William C. Rives, James Madison, and others, the latter of whom, writing to the memorialist on the subject of his claim under date of February 6, 1830, says:

"DEAR SIR: The transactions shown by the papers you inclosed were for the support of the delegates to Congress, and the agency of your father therein was solicited on account of the respectability and confidence he enjoyed among those best acquainted with him."

Mr. Joseph Nourse, who was Register of the Treasury from 1777 to

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1828, writing the memorialist, dated Washington, June, 1827, in reply to a request relative to his father's property, says:

"I have cast back to those periods when your honored father was agent to office of finance; but the inroads of the British army in 1814 deprived us of every record in relation to the vouchers of the period to which I refer."

But, without amplification, these are sufficient to show that the memorialist has been vigilant in prosecuting his rights; and, though he has had numerous reports made in his favor, never could get to the end of relief.

16th. The following sworn statement by the cashier of the Bank of North America, made in obedience to the call of the committee in charge of this claim, in 1848, strongly corroborates the conclusions arrived at by your committee:

BANK OF NORTH AMEEICA,
September 21, 1848.

The account of Haym Salomon with the Bank of North Americ appears to have been as early as the beginning of its operations, from January, 1782, and only to January, 1784, occupies fifteen entire pages of the ledger. The first forty other entire accounts, beginning also from first of the leger, occupy in all, but fifteen pages. The same appears the proportion of the amount of his account when compared with the others.

The following are the balances, as appears in the bank book of Haym Salomon for those periods, as they are in the same handwriting as the ledger of the bank:

February 1, 1782	$23,253 00
April 23, 1782	32,233 00
June 26, 1782	46,569 00
August 14, 1782	18,238 64
May 2, 1783	14,144 35
July 1, 1783	11,005 62
August 25, 1783	14,854 27
March 31, 1784	26,743 74

Respecting the examination of the deposition of the amount charged in the undermentioned checks or drafts to the account of Haym Salomon, paid to Robert Morris, and to Superintendent of Fnance.

August 1, 1782, to Robert Morris, $20,000; August 9, 1782, to ditto, $10,000; August 27, 1783, $20,000; October 8, 1783, $6,000; October 13, 1783, $6,000; October 17, 1783, $6,000; October 27, 1783, $3,000; October 30, 1783, $5,000.

The above, with thirty-three other orders, amounting to upwards of one hundred thousand dollars, exclusive of the above, of various dates and amounts, appear all charged as having been paid to Robert Morris, in the day book and ledger of the bank.

The account of Robert Morris himself begins July 17, 1782, and ends May 6, 1783, being about the same period of time as Haym Salomon's account, as examined. The credit side consists principally of

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two discounts, $22,625 20. The only cash deposited by him was $9,822 06, which appears to have been received from Haym Salomon, as Haym Salomon's account is that day charged with the exact amount stated as paid to Robert Morris.

I have examined the charges in the account of the ledger of the bank against Haym Salomon, of various dates, as received by the following persons: Jefferson, Wilson, Ross, Morris, Harrison, Pendleton, Madison, Randolph, Jones, who are said, in history, to have been members of the Congress of the Declaration, or of the subsequent session of the revolutionary legislature, and found them to agree as to dates and amounts, as well as the sums and dates of those charged to Haym Salomon, as paid to General St. Clair, General Mifflin, and Baron Steuben, with the charges of the same in the bank books.

Respecting the disposition of the funds charged to Haym Salomon, at the bank, as made payable to the persons undernamed, who, according to the journals of the revolutionary Congress, examined, as per certificate of the librarian of the House of Representatives of the United States, August 18, 1848, and according to an exemplification, marked F, from files in the Department of State, signed James Buchanan, Secretary of State, with the seal of that department, papers of old Congress, number 137, page 193, were agents, consuls, chargé d'affaires, and ministers of Louis XVI of France and Charles III of Spain, our allies of the revolution, I found by an examination of the payments to Roquebrun, said to have been the treasurer of Rochambaud's army, August 2, 1782, August 15, and August 18, 1782, amounting to $61,404 38, which several amounts are credited on the same days in the account, as received by Roquebrun from Haym Salomon.

Sieur De La Forrest, (spelled by the ledger Forer,) consul general of France in the revolution, is credited with twenty drafts, amounting to $31,434 39, charged in the bank book and ledger to Haym Salomon.

John Holker, consul of King Louis; the amount as payable to him is also charged to Haym Salomon's account.

Sieur Barbe Marbois, chargé d'affairs of the king; the checks charged, as far as examined, as for amounts received at the bank from Haym Salomon, by him, were credited on the bank ledger as received by Marbois from Haym Salomon.

Chevalier De La Luzerne, the French Ambassador of King Louis XVI, so friendly to this country in the revolution; all the checks charged, or so many as were examined, stated as payable to La Luzerne, were also charged on the ledger of the bank to Haym Salomon, as paid the Chevalier; and the only cash deposits of the latter agree precisely with the amount named on the check payable to him.

Don Francisco Rendon, the secret minister of Charles III, of Spain, in the revolution; the amount and date of the check charged, as payable to him, agree precisely with the ledger of the bank, as charged to Haym Salomon.

J. HOCKLEY,
Cashier of the Bank of North America.

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Witness sworn September 21, 1848, before Chauncy Bulkley, ex-officio justice of the peace; certified according to act of Congress before the prothonotary of the Supreme Court, on September 24, 1848.

In addition to this evidence of the commercial and financial rank and standing of the father of the memorialist, it is proved, by the evidence before your committee, that he negotiated, as agent to the office of finance, the whole of the 20,000,000 livres of subsidy granted by France and Holland, without the loss of a single dollar to the government; and that such was his reputation and standing as a financier, that he was constituted banker to the army sent to our aid by the King of France, and disbursed the whole of that part of the 150,000,000 livres that was expended in this country as the expense of the two first years of the alliance. So satisfactorily did he discharge this duty, and refusing to receive any compensation, that he was honored with a title by Louis XVI, as a mark of royal gratitude.

17th. It is a fact worthy of remark, too, that, while these responsible trusts were being gratuitously performed by Haym Salomon, such was the destitute condition of the whole country, and the tardiness of the people to part with their means, that the revolutionary government was compelled to divert the French and Holland subsidies from the specific purposes for which they were intended (the support of the army alone) to the support of our diplomatic agents abroad: that Benjamin Franklin, John Jay, John Adams, Henry Lawrence, and suite, who so ably represented us at foreign courts with whom we were in alliance, were paid from this fund.

18th. This bankrupt condition of our public credit is well illustrated by the Register of the Treasury, in his report to Congress of the 4th of March, 1790, on the settlement of Mr. Morris's account. He states, that of his receipts, which amounted to $8,174,131, more than $2,000,000 resulted from his commercial and other transactions, and his negotiations with the Bank of North America.

In Mr. Morris's report, at the close of his administration, now in the Treasury Department, speaking of his advances, he says: "It is a misfortune that secrecy should be necessary in the support of the public credit." That it was necessary during his administration is verified by facts stated in his report in relation to his receipts, to wit: that he borrowed, from time to time, in anticipation of the receipts from taxes, &c., directly from the Bank of North America, an amount equal to its capital, and considerable sums on the notes of individuals discounted by said bank, and also by his negotiations with other persons.

The following is a statement of the payments over the receipts, at several quarterly periods, as exhibited in his settlement with the Board of Treasury:

1782.	June 30	$20,613 26
	September 30	218,640 41
	December 31	380,360 21
1783.	March 31	577,630 87
	June 30	826,614 69
	September 30	602,161 21
	December 31	203,002 42

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1784.	March 31.....	$183,670 27
	June 30.....	118,343 24

19th. The proofs before your committee show that it was during the very period above referred to that Haym Salomon was contributing his substance, to the last dollar, in support of the revolutionary struggle. when failure was not only loss of all, but to be followed with the penalties of treason. He did not advance mere paper obligations, first to be depreciated and then repudiated, but he let the government have *specie dollars*, one of which, then, was worth fifty now; and did it with no other hope of reward than the triumph of our cause, and the good faith of the government and people he served.

20th. In view of these facts, so well established, your committee, in common with the views so often expressed by the various committees who have performed a similar service in investigating this case, are of opinion that the memorialist is eminently entitled to relief.

21st. The memorialist only asks that he be indemnified to the extent of the revolutionary paper held by his father at the time of his death, with interest to such extent as Congress may see fit to allow. All the preceding committees have reported in favor of the $353,244 43, with interest on the $18,244 88 treasury certificates, and $17,870 37 commissioner's certificates, amounting to $36,115, from the year 1790, making the aggregate of the indemnity about $453,000; but your committee, at the last Congress, modified the measure of interest, and allowed from the first application to Congress, which was December 29, 1845; which said last named bill your committee again report, for the relief of the memorialist, and respectfully ask its passage.

22d. Your committee feel it their duty to remark, that the memorialist is far advanced in life; that he has sought his rights with equal patience and diligence, and that any further unnecessary delay would be ungrateful, if not a denial of justice.

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IN THE SENATE OF THE UNITED STATES.

MARCH 12, 1860.—Ordered to be printed.

Mr. FITCH made the following

REPORT.

[To accompany Bill S. 268.]

The Committee on Pensions, to whom was referred the petition of Mary K. Guthrie, widow of Captain Presley N. Guthrie, praying for a pension, beg leave to report:

That it appears from the roll that the husband of the petitioner was appointed captain of the 11th regiment of infantry, 16th February, 1847; brevetted major "for gallant and meritorious conduct in the battles Contreras and Cherubusco," 20th August, 1847; distinguished and severely wounded in the battle of El Molino del Rey; was disbanded in August, 1848; appointed captain of 9th infantry 3d March, 1855; died at Newport, Kentucky, 29th December, 1857.

The petitioner prays a pension on the ground that her husband died of disease contracted while in the line of his duty in the service of the United States, and produces the following evidence:

George Suckley, late surgeon United States army, testifies that Captain Presley N. Guthrie "was taken ill while in the line of his duty, from the effects of which he died;" that in the latter part of February, 1856, he was ordered from Fort Steilacoom, Washington Territory, to proceed into the Indian country; that his march was made through a hard country during a rain storm; "that this exposure induced in Captain Guthrie a severe cold accompanied by fever, and *forty hours* thereafter a severe and *complete paralysis of one side of his body supervened;*" that he was the only medical officer of the army in attendance upon the captain; and that he was then, and is still, fully persuaded that the exposure to cold and wet that he had just undergone was the proximate cause of his attack of palsy; and that, in his opinion, the feebleness of body, caused by the paralysis, hastened, perhaps, induced the disease which destroyed his life.

William J. Barry, late a surgeon in the United States army, testifies that he held daily and hourly intercourse with Captain Guthrie during the campaign of 1847 and 1848, in the war with Mexico; that his disease was consumption, and being attacked with pulmonary hem-

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orrhage, he was ordered home; that he never doubted Captain Guthrie entered the Mexican territory in perfect health; and that he believes that he contracted the disease there in consequence of the exposure which his duty imposed.

Upon a careful examination your committee believe this to be a meritorious case, and beg leave to report a bill for her relief.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 129.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the papers in support of the claim of Adam Sener to a pension, beg leave to submit the following:

That it appears the petitioner presented his papers at the 1st session of the Thirth-fifth Congress, and an adverse report was agreed to, which your committee adopt.

"That the petitioner asks to be placed on the roll of invalid pensioners, on account of disability, which he alleges is the result of injuries received while in the service of his country, in the war of 1812. Accompanying the petition is one from some thirty-five persons, claiming to be acquainted with the said Sener, who testify to his good character, his old age, his infirmities, and to his indigent circumstances. But they do not pretend to know anything of the alleged service in the war, nor do they affirm that his present disability is the effect of alleged injury received therein.

"The medical testimony is of the same character; it establishes disability, and says that it results 'from the weakened and painful condition of the parts injured during his service in the army of the United States;' but it does not appear that the surgeons so testifying have any knowledge of such service, except the assertions of the petitioner himself.

"However worthy the case may be, the committee are not willing to establish the precedent of granting a pension where no proof of service is adduced to corroborate the assertions of the petitioner, and therefore recommend that the prayer of the petitioner be denied."

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 130.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. HEMPHILL submitted the following

REPORT.

The Committee on Indian Affairs, to whom was referred the petition of Stephen Krebs, Mary McGehey, and Lucy Long, children of Stephen Krebs, a citizen of the Choctaw nation, report:

That the claims of the Choctaws under the treaty of Dancing Rabbit creek against the United States, have been assumed by the Choctaw Nation by the late treaty with them; and the Senate of the United States having, at its late special executive session, awarded the indemnity as provided for by the late treaty, the claim of the memorialists is no longer of any force against the United States. The committee therefore report, by resolution, that the claim be rejected.

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IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1860.—Ordered to be printed.

Mr. NICHOLSON submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the papers in the case of Jacob Bigelow, administrator of Francis Cazeau against the United States, submit the following report:

In 1817, Congress passed an act appropriating forty-two thousand seven hundred and thirty-seven dollars and ninety-three cents to be paid "to the legal representatives of Francis Cazeau, late merchant at Montreal, or to his or their assignee, or attorney, or other person lawfully entitled to receive the same, in full compensation for all claims against the United States." This amount was admitted to be due on account of supplies furnished by Mr. Cazeau to the army of the American revolution. After the passage of the act referred to, the amount was paid to Josephus B. Stewart, acting as the attorney in fact of Francis Corbeaux, who claimed to be the agent and assignee of Francis Cazeau. After the payment so made, the heirs of Cazeau applied to Congress for payment of the amount so appropriated in 1817, alleging that the payment to Stewart was wrongful and fraudulent, and denying his authority to receive the same. The subject was investigated, and, in 1844, an act was passed appropriating twenty-seven thousand three hundred and fifty-two dollars and thirty-two cents to be paid "to the legal representatives of Francis Cazeau, or to their legal attorney, or other person lawfully entitled to receive the same, it being one fourth of the sum appropriated under an act of Congress approved on the 3d of March, 1817, with interest from May, 1818." This amount was paid to the legal representatives of Francis Cazeau; but being dissatisfied with the result, they renewed their application to Congress for the residue, being three fourths of the appropriation made in 1817. On the 8th of March, 1858, the application was referred to the Court of Claims, and after full investigation and argument, the court decided that the applicants were not entitled to be paid the three fourths of the appropriation of 1817, but that they had received all they were legally entitled to when Congress appropriated to them one fourth thereof in 1844. In this decision, two of the three judges concurred, the third giving a dissenting opinion.

Congress is now called upon to review and reverse the decision made

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by the Court of Claims. The committee have carefully examined the grounds on which this application is made, and have come to the conclusion that there is no justifiable reason on which to question the correctness of the decision made by the court. The only question on which the case turned upon the court was, whether the power of attorney and assignment made by Cazeau to Corbeaux in 1808 had been revoked, either by legal proceedings for that purpose, or by the death ot Cazeau, prior to the time when Stewart, acting as the agent of Corbeaux, received the payment, in 1817. The court held that, as to three fourths of the claim, Corbeaux was an agent coupled with a vested interest, whilst as to the other fourth, he was merely an attorney in fact. The death of Cazeau would not revoke the assignment of the three fourths, but as to the other fourth, it would operate as a revocation. Such was the opinion of the Court of Claims, and such also was the opinion of Congress in 1844, when one fourth of the claim was ordered to be paid. The court also decided that there was not sufficient evidence in the case to show that the assignment of the three fourths of the claim had been revoked, as alleged, by legal proceedings. Congress seems to have come to the same conclusion in 1844, in deciding that only one fourth of the claim was legally due to the legal representatives of Cazeau.

The committee are unable to discover any error in the conclusions to which the Court of Claims arrived, and they accordingly report adversely to the memorial, and ask to be discharged from the subject.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 132.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860—Ordered to be printed.

Mr. SEBASTIAN submitted the following

REPORT.

The Committee on Indian Affairs, to whom the papers in the case of Sour-john, a Cherokee, were referred, ask leave to report:

That the origin and history of this claim are very fully set forth in a statement of facts on file, made under the authority of the office of Indian affairs, from which it appears that:

By decree No. 112, Reg. Decrees, the first board of Cherokee commissioners awarded $3,050 to the heirs of Sour-john, for the value of a reservation in Georgia, taken under the treaty of 1817 and 1818. In the decree, the commissioners state that "the claimants are Towney, the widow of Sour-john, Olly, Tooka, Akey, Utzah, Sally, Polly, and Archibald, the children."

Of the amount awarded there was first paid to Gillispy, the attorney in the case, $305, leaving for the heirs, $2,745.

April 20, 1841, "a list designating the names of certain individuals, who are entitled to compensation for reservation claims," &c., was sent to Major Armstrong, with instructions to pay said individuals; and with this special instruction, that when awards are in favor of heirs, your attention is invited to the decrees of the commissioners, *copies of which were sent to you on the 18th November*, and there were other injunctions of caution in the letter of instructions.

Major Armstrong paid the amount due, $2,745 in the second quarter, 1841, to Elijah Sour-john, Bill Sour-john, and Tooka Downing; and upon the coming in of his account for that quarter, that item, $2,745 was *suspended*, for the reason that he had paid the whole sum to three persons, only one of whom was named in the original decree, Tooka, and nothing was left for the other heirs named.

In 1843, Major Armstrong, in explanation, stated that he had paid the whole amount to "three heirs, as stated in the voucher, *because there were no heirs named on the roll furnished me, or reference made that there were other heirs.* The payment was made in the presence of a large number of Cherokees; the interpreter, and other respectable Cherokees, stating that the three I paid were the heirs and the only heris of Sour-john. I have never heard of any other heirs."

The item was continued *suspended*, through subsequent settlements,

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until 1845, when an affidavit of John Drew, a member of the Cherokee National Council, dated March, 1845, was offered in support of the allowance of the item. In this affidavit, John Drew swears that he "*was well acquainted with the Cherokee people*," &c., and "believes the money was paid to the *legitimate and proper heirs*."

To this affidavit is appended a statement or certificate of Governor Butler, to the following amount: That, within his (Governor B's.) knowledge, there are no other heirs, (than the three to whom the money was paid.) That he knows John Drew; that he is a highly respectable citizen, &c., and that said Drew is a member of the National Council, &c.

Upon the affidavit of Drew, and the certificate of Governor Butler, Mr. Commissioner Crawford, in March, 1845, *allowed* the item of $2,745, suspended in Major Armstrong's account of 1845; and, in auditing of the account settled September, 1845, the Second Auditor *passed the amount to Major Armstrong's credit*.

The claim now comes up upon application of Mr. T. Fox Taylor, who represents himself as attorney for certain Cherokee claimants, and in a letter, dated 20th May, 1846, says he wishes "information in regard" to a "claim allowed the heirs of Sour-john, deceased, for a reservation of land, by the board of commissioners, &c. You will please refer to the decrees of the commissioners in that case, where you will discover who those heirs are, and inform the undersigned whether or not the amount awarded them has been paid; and, if not, why it has not been done; and, if paid, by whom and to whom, and by what authority."

From the foregoing statement of the case, it will be seen that the United States has once, through its authorized agent, paid this claim to certain persons who, according to the testimony on file and the action of the proper officers, in allowing the payments, were deemed the true and sole heirs of Sour-john, deceased, until satisfactory evidence is produced that there was fraud or mistake in the payment. This is not done. The claim has rested a long period since the last action upon it, and no proof is yet afforded that the original heirs of Sour-john, named in the decree, or their descendants, yet survive or were surviving at the time of payment by Major Armstrong, except those who were then recognized as such upon the most satisfactory authority. The committee has caused the files and records of the Indian Office and the Journals of Congress to be explored, but find nothing beyond that which has been stated. The claim made by the agent of these heirs is unsupported by any power of attorney, or any proof that the parties whom he professes to represent, are in being; while the resolution introduced in the Senate, in 1847, for the payment of this claim, does not appear to have been based upon any report of the facts. The committee, therefore, report adversely to the claim.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 133.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. THOMSON made the following

REPORT.

[To accompany Bill S. 269.]

The Committee on Pensions, to whom was referred the petition of Micajah Hawks, praying to be allowed a pension, submit the following:

It appears that the petitioner presented his papers at the second session of the Thirty-fifth Congress, and that a favorable report was made by the Committee on Invalid Pensions, of the House of Representatives, and a bill for his relief submitted, which report and bill your committee beg leave to adopt.

"Your committee deem it proper to state that their action in his case is to be regarded as an exception rather than as in conformity to the general rule that has governed your committee.

"It appears, from proper proof, that he was an assistant surgeon in the naval service of the United States in the war of 1812, and was acting in that capacity on board the Hornet at the time of the celebrated engagement of that ship with the British sloop-of-war Peacock. He was honorably discharged May 10, 1813.

"It is equally clear that he is now totally disabled; and, at the age of seventy-four years, is destitute, as well as helpless. Three physicians and surgeons of high standing in his vicinity give it as their decided opinion that his disability, which has been of long standing, is entirely in consequence of the accident which, as he alleges, befell him while in the line of his duty on board the Hornet.

"The chief point of difficulty in his case is with regard to the proof of the original injury.

"His own statement is, that soon after the Hornet arrived in New York he was called on to visit a sick man at one or two o'clock in the morning, the vessel at that time being under repair, and everything about her being in confusion and disorder; in passing to the patient he fell into the hold of the vessel, and that the result was an injury of the small of the back, less serious at first, but which has constantly increased until he has long been unable to move without help.

"As to this original injury, Mr. Hawks furnishes no statement but his own. Nor can he do so. He continued to serve as assistant surgeon until honorably discharged, and the rolls furnish no proof of his disability. It further appears (see letter of T. J. D. Fuller, Esq.,) that there is but one other survivor of this cruise of the Hornet, viz:

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Commodore Forest, now absent in command of the Brazilian squadron. His testimony cannot, therefore, be obtained at present; nor is it certain that it would avail the applicant anything if procured.

"The narrative of the applicant is consistent with itself, and with the opinions of the medical gentlemen on file. He produces the certificates of the best men of his vicinity in favor of his application, and his integrity and honorable standing are heartily indorsed by Hon. S. C. Foster, of this House, and by Hon. T. J. D. Fuller, whose letter has already been referred to, and to the contents of which the attention of the House is invited.

"These facts lead your committee to believe that the applicant has given a truthful statement of his injury and of its effects, and that he is consequently entitled to the relief proposed by the bill herewith reported."

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 134.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 270.]

The Committee on Foreign Relations, to whom was referred the memorial of John H. Wheeler, late United States minister to Nicaragua, have had the same under consideration, and now report:

The memorial sets forth that a party of American citizens, while crossing the Isthmus, *en route* from California to New York, were attacked by the natives at Virgin Bay, on the Lake of Nicaragua, on the 19th of October, 1855, some of whom were killed, and others wounded and robbed, while at the same time another party of hostile natives, strongly armed, were collected at San Carlos, on the other side of the lake. Thus hemmed in by hostile forces on both sides, and cut off from access to either ocean, they applied to the memorialist, then minister resident of the United States at that place, for protection and relief, which was promptly afforded; comfortable quarters procured and food supplied them, (two hundred and fifty in number,) for two days and nights.

It further appears, that under instructions from the Department of State, dated October 23, 1854, the memorialist was required to aid Joseph W. Fabens, Esq., a commissioner appointed for that purpose, in collecting information and taking testimony at San Juan, (Greytown,) in relation to the conduct of the persons who assumed political control over San Juan del Norte, and also with regard to the claims against our government on account of property destroyed by the late bombardment of that place by Captain Hollins, of the United States navy; that in the performance of this service he was engaged for more than two months away from his proper residence, and necessarily subjected to great inconvenience and additional expenses, amounting to the sum of $273 98.

The memorialist further sets forth, that in the fall of 1856, by recall from the Department of State, he returned to the United States, as was then supposed, on a temporary visit. On that occasion, he left at the legation personal property to the value of over $2,000; that this prop-

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erty was destroyed by the allied forces of Guatemala, Honduras, San Salvador, Costa Rica, and a part of Nicaragua.

The memorialist further represents, that on his departure for Central America he was instructed by the Department of State to draw upon London for his salary and the contingent expenses of the legation, and for that purpose a credit was opened for him with Messrs. Baring Brothers; that on his arrival in Nicaragua it was found impracticable to negotiate drafts on London; he had, therefore, to make an agent here, who drew on London, and for a time deposited in New York or Washington; that in Nicaragua these drafts could only be negotiated at the reduced value of the currency of the country, in which the peso or dollar was worth only eighty cents for each real dollar drawn for. The amount of his drafts, from October, 1854, to October, 1856, was $14,706, and consequently the loss incurred by him was $2,941 20.

These statements are fully supported by the testimony filed with the memorial, and may be summed up thus:

1. Reimbursement for amount expended in the maintenance and protection of distressed American citizens crossing the Isthmus	$500 00
2. Amount of expenses incurred while taking testimony at San Juan del Norte	273 98
3. Value of property destroyed at Granada	2,000 00
4. Loss in exchanges	2,941 20
	5,715 18

The first item was embraced in a memorial presented to the Senate at the first sesson of the Thirty-fifth Congress, referred to this committee, fully examined, and a bill for the relief of the claimant to the amount claimed reported by them. That bill, for want of time, failed to be acted upon by the Senate. Upon a reëxamination, the committee fully concur in the views presented in that report, and therefore readopt the same as part of this report.

The other items above mentioned were not embraced in that memorial, for the reason, as stated by the memorialist, "that at the time that memorial was presented, in 1857, his accounts were in progress of settlement before the Treasury Department, and it was not until October, 1857, that they were finally closed;" and further, that he was not apprized of the value of his property destroyed at Granada in time for the last session of Congress.

As to the second item above presented, there can be no doubt that a public functionary charged with the performance of extra duties not pertaining to his office, and necessarily involving additional expenses, should be reimbursed to the amount of his expenses thus necessarily incurred.

Upon a similar principle, the third item should also be allowed; for it is obviously the duty of government to protect its public officers engaged in its service in the full and unrestrained enjoyment of

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all their personal and property rights, at least against all acts of public force, while so engaged, and on failure to do so, to make good any losses he may have sustained.

With regard to the fourth and last item, the loss on exchange, in the opinion of the committee it would seem to be the duty of the government, in paying the salaries of its public agents, whether domestic or foreign, so to do it as to make such payment available to the officer to the amount of such salary at the place where he is stationed. It has been usual heretofore to observe this rule, and it would be manifestly unjust to Mr. Wheeler to depart from it in this instance.

The committee report a bill in accordance with the views above presented, and recommend its passage. They also report herewith the testimony by which the various items claimed are supported.

A.

REPUBLIC OF NICARAGUA,
Granada, December 24, 1855.

I do hereby certify that I was a passenger on board the steamer Uncle Sam, from San Francisco to New York; that, on the 19th of October last, we were unprovokedly fired upon while at Virgin Bay by the forces of the then government of Nicaragua; that many were killed, many wounded, and all much alarmed. By unanimous consent, we prevailed upon the agent of the Accessory Transit Company to take us to Granada, where we placed ourselves under the care of the American minister, Colonel Wheeler, who received us as brothers, procured comfortable quarters, and supplied us two days and nights with every necessary. There were 250 of us; two died and were buried by the care of Colonel Wheeler, and two left in hospital, and one, a sailor, at his house, by whom he was fed. He also furnished clothes to those who had been robbed at Virgin Bay.

W. E. RUST.

LEGATION OF THE UNITED STATES, *Granada*.

Sworn to before me, this 24th December, 1855.
JNO. H. WHEELER.

B.

REPUBLIC OF NICARAGUA, *Granada:*

I, Jos. N. Scott, do hereby depose, that for some years I have been, and still am, the general agent of the Accessory Transit Company, on this Isthmus; that on the 19th of October last, the passengers on said route were unprovokedly fired upon by a strong force of the army of Nicaragua, at Virgin Bay, by which some were instantly killed, many wounded, and all much alarmed. The same party held a strong force at San Carlos, and had already fired on the company's steamer, and prevented her passing, by which a lady and child were instantly killed, and another wounded.

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There seemed to be no escape for the unfortunate, unarmed passengers, as both points of the route were occupied by a strong force. They unanimously entreated me to take them to Granada, the residence of the American minister, Colonel John H. Wheeler, as it was impossible, from the number of passengers, and being out of provisions, for me to keep them any longer.

When we reached Granada the cholera broke out, and one (Nicholas Carrol, Esq., of California,) died while in the harbor, and many were sick. I sent for the minister, and he came on board the steamer and informed the passengers that, as American citizens, they should have every comfort as well as protection. He supplied them (in number two hundred and fifty) with comfortable quarters, and supplied them with food for two days and nights. Two died and were buried at Granada, and three were left, unable to move for wounds; one in Col. Wheeler's house. He freely gave his time, money, house, and clothes to his suffering countrymen, as some of them were robbed of everything by the enemy at Virgin Bay.

JOSEPH N. SCOTT, *Agent.*

Sworn and subscribed to, before me, this 13th December, 1855.

JNO. H. WHEELER.

C.

[Duplicate.]

No. 19.] DEPARTMENT OF STATE,
Washington, February 5, 1856.

SIR: Your dispatches to No 39, inclusive, are received.

In relation to the expense which you allege, in your No. 34, you have incurred in the support of a large number of American citizens in distress, who placed themselves under your protection, I have to inform you that this department has no fund from which it is authorized to reimburse such expenditures. Although inconvenience and hardship may be the result of this inability to replace the funds which our diplomatic representatives often advance out of their private means for the relief of their distressed fellow-citizens in foreign countries, the department has no mode of relief at command, and can only suggest an application to Congress for such aid as the circumstances warrant.

I am, sir, your obedient servant.

W. L. MARCY.

JOHN H. WHEELER, Esq., &c.

E.

No. 4.] DEPARTMENT OF STATE,
Washington, October 23, 1853.

SIR: Mr. J. W. Fabens, late United States commercial agent at San Juan de Nicaragua, is about to proceed to that place to collect

information and take testimony in relation to the conduct of the persons who assumed political control over it, and to the claims which it is understood some of that community intend to present, through other governments, to the United States, for property destroyed at the late bombardment, by Captain Hollins, of the United States navy. You are directed, while on your way to the seat of the Nicaraguan government, to stop at San Juan and aid Mr. Fabens in performing the duties assigned to him. These duties are particularly designated in his instructions. If there should be no local magistrate before whom depositions can be taken, you are requested to authenticate them in your character of minister of the United States.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

JOHN H. WHEELER, Esq., *&c.*, *&c.*

F.

REPUBLIC OF NICARAGUA,
Granada, November 13, 1855.

I do hereby state that, according to the orders of the State Department at Washington, of the 10th of October, 1854, I repaired in December, 1854, to Greytown, or San Juan del Norte, to take testimony of various persons as regards the claimants and amount of property destroyed by Captain Hollins, of the United States ship Cyane, as will more fully appear by reference to said orders; that the minister of the United States, Colonel John H. Wheeler, while on his way to the seat of the Nicaraguan government, stopped at San Juan and afforded me all and every aid I required in performing the duties assigned to me; that he remained with this sole intent at that place for more than two months, at which time and place living was very high and provisions very scarce.

J. W. FABENS.

[Duplicate.]

G.

No. 32.] DEPARTMENT OF STATE,
Washington, September 27, 1856.

SIR: The President deems it proper that you should return to the United States, and by his direction, I hereby notify you of his determination. You will, therefore, without delay, after receiving this communication, return home, and on reaching the United States you will apprise this department of that fact.

I am, sir, your obedient servant,

W. L. MARCY.

JOHN H. WHEELER, Esq., *&c.*, *&c.*

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H.

The undersigned, a native and citizen of North Carolina, states that he emigrated from New Orleans on the 11th January, 1856, with an intention of settling in Nicaragua, his profession being that of a planter, and pursuing the cultivation of cotton, sugar, tobacco, &c. He paid out his money for his passage and expenses, and was no way connected with any expedition or force on leaving the United States, and on his arrival in Nicaragua he studiously avoided taking any part in the conflicts which then disturbed the country.

From this cause, after some delay, it was found impracticable to carry out his intention to cultivate the soil, and becoming straightened for funds, he was compelled to earn his support by taking employment as steward in the hospital, under charge of the surgeon general. The army was pressed for men, and he was repeatedly urged to join the force under command of General Walker. This he utterly refused. On Dr. Ingraham, the surgeon general, threatening him, and ordering that he report himself to the commanding officer at New Granada, he was much perplexed and distressed. In his dilemma he applied to the American minister, then resident at Granada, for protection in the premises, which was efficiently and promptly afforded, much to the dissatisfaction of the surgeon general, who sought every mode of annoyance to me; so much that I had to go to the house of the American legation, where I remained during my stay in Nicaragua.

This is only one of the many instances of my own knowledge of the efficient and decided action of Colonel Wheeler in behalf of his fellow-citizens. On another occasion, to the knowledge of myself and many others, two young men from Wilmington, Delaware, had enlisted, whose passages had been paid, and expenses from New York to Nicaragua, applied for his aid through their friends. He procured their discharge, and sent them to their friends and parents.

On the attack of the allied forces of Guatemala, San Salvador, and Honduras, on the city of Granada, on the 12th October, 1856, the plunder, burning of houses, and murder of all Americans was proclaimed. Many fell victims; among them two preachers of the Gospel, a young child of Mr. Smith, of New York, Mr. Lawless, a merchant, and others. The legation house, over which the American flag waved, where the wives of Americans had fled for safety, was assaulted. The house, being strongly barricaded, resisted the attack, while a severe, active and destructive fire from a few of the Nicaraguan army was very fatal to the assailants. Had they succeeded in effecting an entrance, no age, sex, or condition could have escaped. The door was perforated with balls, and the flag riddled by their shots. Colonel Wheeler, though prostrated by sickness, was enabled to preserve quiet among his numerous guests, and discountenanced every offensive effort except in self-preservation. On his leaving Granada, his house was destroyed, all his furniture, stores, and library were burnt up, entailing a loss of more than two thousand dollars, to the knowledge of this affiant.

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The health of Colonel Wheeler, by the diseases of this climate and exposure of his position, completely failed, and I was compelled to accompany him home, as he was unable to help himself; and on reaching the United States, in November, 1856, his life was only preserved by the skill of physicians and the most assiduous attention.

R. J. DARDEN.

This day came before me, Redmond Darden, well known to me, and made oath that the foregoing was true to the best of his knowledge and belief.

MOSES KELLY, *J. P.*

WASHINGTON CITY, *January* 15, 1857.

This certifies that I am well acquainted with R. J. Darden, the affiant to the foregoing statement, and believe him to be a man of veracity and honor.

JN. GRANGER, *Recorder.*

RECORDER'S OFFICE OF GENERAL LAND OFFICE,
Interior Department, Washington City, January 16, 1858.

I.

CITY OF PHILADELPHIA, PENNSYLVANIA,
January 18, 1858.

The undersigned, long a practitioner of medicine in Philadelphia, and at present one of the professors in the Jefferson Medical College, would state that in the months of December, 1856, and January, 1857, I attended at the Ashland House, in this city, Colonel John H. Wheeler, then recently returned from Nicaragua, as United States minister to that country.

His case was one of complication of diseases, brought on by a residence in a tropical climate, and attended by a complete prostration of the nervous system, the consequence of exposure and excitement; the case was one of danger, and demanded all my care and skill. The disease finally concentrating in his right hand, he was forced to submit to the severe operation of amputation of one of the fingers of that hand, which I performed on the 18th January, 1857.

I have no hesitation in saying that his disease was consequent to his residence in Nicaragua; his suffering was very acute and dangerous; and his recovery, for a time, very precarious and protracted.

JOSEPH PANCOAST, *M. D.*

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Letter from the Secretary of State, report from the Fifth Auditor, and other testimony, relating to the memorial of John H. Wheeler, late minister to Nicaragua.

DEPARTMENT OF STATE,
Washington, May 7, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 27th ultimo, submitting, in behalf of the Committee on Foreign Affairs, the memorial and accompanying documents of John H. Wheeler, Esq., late minister to Nicaragua, praying reimbursements for losses sustained and expenses incurred in the service of the government.

In relation to that part of Mr. Wheeler's memorial which refers to his protection and support of a large number of his countrymen, who were necessarily thrown upon his hospitality in consequence of the attack made upon them at Virgin Bay, while in transit from California to New York, I have to reply, that Mr. Wheeler reported these facts at the time of their occurrence to the department, as you will perceive by referring to Executive Document No. 68, 1st session, 34th Congress, Senate, pages 32, 33. No estimate of the expense which the care of 250 destitute persons imposed upon the minister has been submitted to the department. Under the peculiar circumstances of the country, the amount must have been very considerable. It was not within the power of this office, however highly it might appreciate the humanity and hospitality extended by the minister to his distressed and destitute countrymen, to reimburse the outlay involved thereby. He was therefore referred to Congress, *in the anticipation that no difficulty would be experienced in obtaining an appropriation for that object.*

In regard to the second item referred to in Mr. Wheeler's memorial, which embraces expenses incurred in taking testimony at San Juan del Norte, in relation to the alleged losses of persons by the bombardment of that place, I have the honor to communicate the copy of a dispatch from my predecessor to Mr. Wheeler, containing his views upon that subject. It is dated 5th December, 1855.

It is just to add, upon this point, that the information derived from the investigations of Messrs. Wheeler and Fabens *has been of much value to the government* in disclosing the exaggerated and fraudulent nature of many of the claims for indemnification presented by the inhabitants and other alleged sufferers from the bombardment of Greytown.

As the destruction of his furniture and effects, which forms another item of Mr. Wheeler's claim, occurred after his return from Nicaragua, and as there was not, at the time, any agent of the United States in Granada, the department has no official information respecting the nature and extent of those losses, other than that contained in his memorial and accompanying papers. When Mr. Wheeler left Granada, he did so under *circumstances which warranted him in supposing that his withdrawal was not necessarily permanent.* It is presumed that, under such an impression, all of the effects of his domestic establishment were left behind.

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The last item claimed by Mr. Wheeler, viz: loss by exchange, will be referred to in a separate communication accompanying this.

Returning the memorial and documents, I have the honor to be, sir, your obedient servant,

LEWIS CASS.

Hon. D. E. SICKLES,
Committee on Foreign Affairs, House of Representatives.

DEPARTMENT OF STATE,
Washington, May 13, 1858.

SIR: In reply to that part of your letter of the 27th ultimo, respecting loss by exchange on the sale of the drafts of Mr. Wheeler, late minister resident to Nicaragua, I have to inform you that I caused inquiry to be made of the Comptroller of the Treasury, and beg leave to inclose a copy of his reply.

I have the honor to be, sir, your obedient servant,

LEWIS CASS.

Hon. D. E. SICKLES,
Of the Committee on Foreign Relations, House of Representatives.

TREASURY DEPARTMENT,
Comptroller's Office, May 11, 1858.

SIR: I have the honor to acknowledge the reference to this office of letter of Hon. D. E. Sickles to the State Department, dated April 27, 1858, with accompanying memorial of John H. Wheeler, late minister to Nicaragua, in which he claims $2,941 32, for loss by exchange, with request that I furnish you with a report upon so much of Mr. W.'s memorial as relates to his claim for loss by exchange.

On the 5th instant, the House of Representatives passed a resolution requesting the Secretary of the Treasury to furnish copies of the papers on file in his department in relation to the claim of Mr. Wheeler, for losses by exchange on drafts for his salary, together with the grounds upon which said claim was disallowed by the Treasury Department.

A copy of this resolution was referred by the Secretary of the Treasury to this office for report, which report has just been prepared and transmitted to the Secretary this day.

Inasmuch as the report is full, and will doubtless be satisfactory, and as it will be in possession of the Committee on Foreign Affairs, of which Mr. Sickles is a member, it is suggested that a reference to it may be sufficient for Mr. Sickles's purposes, and thus the labor of copying it and the consequent delay be saved.

If, however, upon this explanation, you still desire a special report, I will, with pleasure, cause it to be prepared.

The letter of Mr. Sickles, and accompanying papers, are herewith returned.

Respectfully,

W. MEDILL, *Comptroller.*

Hon. JOHN APPLETON,
Assistant Secretary of State.

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TREASURY DEPARTMENT,
Fifth Auditor's Office, May 24, 1858.

GENTLEMEN: Your letter of this day, inquiring as to the action of this office upon Mr. Wheeler's account, as minister resident to Nicaragua, and the grounds of that action, came to hand this morning. There was no difficulty or uncertainty about Mr. Wheeler's accounts for salary or disbursements, made by him in the line of his duty as minister. All such accounts were properly vouched and allowed in this office as charged and claimed by Mr. Wheeler. The only item of his accounts that presented any difficulty was the charge for loss in exchange. The facts, as they appeared in this office in Mr. Wheeler's case, were these: Mr. Wheeler was authorized to draw upon "Baring Brothers," of London, for his salary, and, of course, to get his money, he was forced to sell his drafts in Nicaragua for the highest price he could get. Those drafts were nominally worth par in that country. and were not selling at a discount; but to enable him to sell his drafts at par, he was forced to take the currency of that country also at par. This currency was composed of two kinds; one kind was a coin passing currently in Nicaragua *called a dollar*, which contained thirty-three per cent. alloy and sixty-seven per cent. of pure silver, compared with the United States coin; and, consequently, a dollar of that currency was only worth, commercially, seventy-six cents. The other currency of that country consisted of United States ten cent pieces, eight of which was of greater intrinsic value than a local dollar of that country; and thus, by common consent, eight United States dimes passed for a dollar. It appeared that Mr. Wheeler sold his drafts at par, but to do so, was forced to and did take eight dimes or eighty cents United States coin for each dollar of his drafts, thus losing upon each dollar drawn for twenty cents. The government was bound to pay Mr. Wheeler, in Nicaragua, one hundred cents to the dollar, United States coin; but as the government sent no money to Nicaragua to pay his salary and expenses, he was forced to sell his drafts there, and take such money and at such price as he could get. If he had refused to take eight United States dimes to the dollar, he would have been forced to take a Nicaraguan dollar, which would only have been worth seventy-six cents, and thus his loss would have been twenty-four cents to the dollar.

Under those circumstances, this office decided that Mr. Wheeler, being a government agent, was bound to sell his drafts for the highest price he could get, and, therefore, he was bound to take eight dimes to the dollar, when he could do so. It appeared plain to this office that, if the government had paid to Mr. Wheeler, in Nicaragua, his salary in United States dollars, (either in gold or silver,) as the government was bound to do, that he would have saved thereby twenty cents on each dollar of his salary, which, under the circumstances, he was forced to and did lose; all of which was caused by drawing bills on London, instead of paying him in United States coin in Nicaragua.

This office could not regard this loss in any other light than as loss in exchange, not believing that, because, in *common parlance*, in that country, eight dimes was called a dollar, that it really was a dollar,

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or that it was worth as much to Mr. Wheeler as ten dimes (his real due) would have been. Thus he was allowed twenty per cent. loss in exchange upon all his drafts sold in that country; but on drafts drawn and sold in the United States he was not allowed any loss. Thus you are answered as to what action this office took in Mr. Wheeler's case, and the principles upon which that action was based.

With great respect, I am your obedient servant,

MURRAY McCONNEL,
Fifth Auditor.

The COMMITTEE ON FOREIGN AFFAIRS,
House of Representatives in Congress.

By a resolution of the House of Representatives, passed 5th May, 1858, "copies of the papers on file in the Treasury Department, in relation to the claim of J. H. Wheeler, late minister to Nicaragua, for losses charged to have been sustained by him by discounts upon drafts for his salary, together with the grounds upon which said claim was disallowed by the Treasury Department," were furnished by the First Comptroller of the Treasury, and published.—(Executive Document, No. 125.) On page 26 of said document is the following certificate:

"I do hereby certify, that during the absence of Mr. Wheeler from the United States at Nicaragua, as minister, under a general power of attorney, I transacted all his pecuniary matters in this country, such as collecting rents, debts, and his salary. That during the first year the drafts were drawn on Messrs. Baring Brothers, London; and subsequently, by instruction from the State Department, the place of payment was made at the Treasury Department. That under this power of attorney I did draw from the said bankers in London, and from the Treasury Department, the amount due Mr. Wheeler for his salary, and Mr. Wheeler from Nicaragua drew on me for the amounts as he required; that said drafts were sold by him in Nicaragua to different persons at different times; and from these persons and others I have always understood and believe that the currency of that country was eight dimes to the dollar, which was paid to Mr. Wheeler for said drafts.

"J. F. BROWN.

"WASHINGTON, *October* 16, 1857."

"I further certify that Mr. Wheeler did commence drawing on me drafts as soon as he arrived in Central America, to wit: in December, 1854, and continued the same until he left that country in November, 1856.

"J. F. BROWN."

"NOTE.—It is represented to me that Mr. Wheeler *purchased property in Washington, where his family continued to reside,* to be paid for from his salary. That he appointed Mr. Brown his agent to draw the

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same, and apply it as aforesaid, and in support of his family. It is also represented that Mr. Brown sold a portion at least of said drafts for *as high as eleven per cent. premium.*"

The note appended by the Comptroller is not a copy of any paper furnished by Mr. Brown, nor is it believed of any paper on file in the Comptroller's office. The resolution of the House called for "*copies of papers on file.*" The truth of this note, thus surreptitiously interpolated, may be judged from the following *affidavit* of Mr. Brown:

I, Joseph F. Brown, do hereby certify that the note appended to a certificate, dated 16th October, 1857, given by me, as printed in Executive Document No. 125, was never furnished directly or indirectly by me to the First Comptroller, or to any one else.

That to my own positive knowledge Mr. Wheeler at no time ever *purchased any property in Washington to be paid from his salary* as minister to Nicaragua; nor was I ever employed as his agent to apply his salary, as aforesaid, in any shape or form for such a purpose.

That his family did not continue to reside in Washington during his absence in Central America; but accompanied him when he left the United States, except one of his sons at school, who followed him in the spring after his departure in the fall.

That in the drafts which, as his agent, on London were drawn, no *premium was realized by me in the aggregate, but, on the contrary, a positive loss;* and that the averments in said note, appended to my statement, *are in every respect untrue.*

And I further certify, that at the end of each quarter Mr. Wheeler had overdrawn, and was in arrears to me, in his drafts drawn on me in Washington, while he was in Central America.

J. F. BROWN

Sworn to and subscribed before me, this 28th May, 1858.

THOS. J. FISHER, *J. P.*

This proves the spirit by which the document was prepared by the First Comptroller, and the gross injustice done by it.

Hon. John B. Kerr, late chargé to Nicaragua, states (see page 8 of Doc. No. 125) that "the only currency of Nicaragua, during his official residence there, consisted of American dimes, *eight to the dollar*, and single and two franc pieces, four to the dollar."

In a letter dated Baltimore, 11th July, 1857, to Mr. Wheeler, Mr. Kerr states:

"Let me know what claim you are making in regard to the difference of currency between the two countries, and your loss thereby. *In every thousand it was two hundred.* It will be explained in the papers filed by me."

General Joseph Lane, delegate in Congress from Oregon, states:

"In transit from Washington to Oregon, I have had occasion to pass by the Nicaragua transit route from San Juan del Norte to San

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Juan del Sur, and found the currency of that republic universally paid and received to be eight dimes of United States coin to be equal to the dollar of the country.

"JOSEPH LANE.

"WASHINGTON CITY, *May* 28, 1858."

Certificates of M. E. Bradley and Thomas J. Van Dyke, of value of American dollar in Nicaragua.

I do hereby certify that I resided in Nicaragua during the years 1855 and 1856, and acted often as the agent and private secretary of Mr. Wheeler, the American minister.

That the universal currency of the republic of Nicaragua is eight dimes to the dollar, and it is the custom to take them and receive them at that rate.

That a bill of exchange on London or New York commanded no premium, but was par only, in Nicaragua.

That in my transactions I had occasion to call on Mr. Wheeler for drafts, and negotiated with others for him, and on no occasion was any premium charged or paid.

THOMAS J. VAN DYKE.

PHILADELPHIA, *March* 19, 1857.

I do hereby certify, that the currency at Granada, Nicaragua, Central America, for the last five years, was eight dimes to the dollar, and that, although the government did within the last year enact that ten dimes should be the legal currency, yet among the people the usual custom was to take and receive eight dimes.

Witness my hand, this 19th March, 1857.

M. E. BRADLEY.

And I further certify that a bill of exchange on London or New York was at par only, and commanded no premium.

M. E. BRADLEY,

Agent Republic Nicaragua, and was put in possession of the Transit Co. property as Q. M., when seized by Nicaraguan government.

The statements are all made by gentlemen of observation and truth, who were on the ground. The statement furnished by Messrs. Eames and Bowlin, in Document 125, as to the currency of Venezuela and New Granada, are not pertinent to the point at issue, since neither of them were conversant with affairs in Nicaragua, or were even in the country, and should not weigh against the testimony of Mr. Kerr, General Lane, Mr. Van Dyke, and Mr. Bradley, who were in Nicaragua.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 135.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 271.]

The Committee on Foreign Relations, to whom was referred the resolution of the Senate of the 19*th December,* 1856, *with the accompanying papers, relative to the claim of John P. Brown, principal interpreter of the Turkish language to the United States legation at Constantinople, for additional compensation for diplomatic and judicial services performed by him at various intervals during the years* 1838, 1839, 1852, *and* 1854, *have had the same under consideration, and report:*

The Secretary of State, to whom the resolution was referred by the committee for information, in his reply, dated January 30, 1857, says: "As to the services of Mr. Brown, as chargé d'affaires from the 11th of April, 1838, to the 19th of July, 1839; from the 30th of July, 1852, to the 5th of July, 1853; and from the 19th of December, 1853, to the 31st of January, 1854, the records of this department show that, during those periods, he was left in charge of the legation, and that he performed the duties devolved upon him in a manner satisfactory to this government."

In regard to the claim for compensation for judicial services under the act of August 11, 1848, the Secretary adds: "That act has never been construed by the Executive as intending to allow diplomatic agents and consuls in Turkey compensation for such services."

Concurring with the Secretary, in his construction of the act of August 11, 1848, the committee are of opinion that Mr. Brown is not entitled to the compensation claimed by him for judicial services during the several periods named in his accounts; and they therefore recommend that that portion of his claim be disallowed. The claim for diplomatic services, however, stands upon different grounds; and being fully supported by the records of the Department of State, entitles him, in the opinion of the committee, to the difference between the compensation heretofore received by him, as principal interpreter, and that allowed to a chargé d'affaires of the United States. They, therefore, report a bill in his favor for that amount, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 136.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 272.]

The Committee on Foreign Relations, to whom was referred the memorial of Charles E. Anderson, Esq., late secretary of legation of the United States at Paris, praying additional compensation for services rendered and expenses incurred by him as acting chargé d'affaires during a portion of the time, have had the same under consideration, and now report:

That it appears from the memorial that Mr. Anderson was appointed secretary of the legation of the United States at Paris in 1836, under General Cass, our minister at that court; that in March, 1837, on the departure of the minister for the Mediterranean and the Holy Land, he was presented to the court of Louis Philippe, as chargé d'affaires of the United States *ad interim*, and that from that time till the return of General Cass to his post, a period of eight or nine months, the entire duties, responsibilities, and expenses of the legation devolved upon him.

These statements of the memorial are substantially sustained by a letter from the Secretary of State, dated February 20, 1855, which says: "It appears from the records and files of this department that Mr. Anderson acted as chargé d'affaires of the United States at Paris, from the 1st of April until the 29th of November, 1837."

Regarding this claim as being fully within the principle heretofore established in similar cases, the committee report a bill for the relief of the claimant, and recommend that it be passed.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 137.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 273.]

The Committee on Foreign Relations, to whom was referred the memorial of J. E. Martin, Esq., acting consul of the United States, praying compensation for diplomatic services, have had the same under consideration, and now report:

It appears from the memorial that on July 19, 1850, on the recall of Mr. J. B. Clay, chargé d'affairs of the United States at Lisbon, the archives of the legation were placed in the hands in the memorialist, then the acting consul of the United States at that port. That from that time to June 15, 1851, when Mr. C. B. Haddock, the successor of Mr. Clay, arrived in Lisbon, the entire duties and responsibilities of the legation rested upon and were performed by him. That during that time the fees and emoluments derived from the consulate were insufficient to pay the current expenses of the office, and that he has received no compensation whatever for the additional duties and responsibilities devolved upon him by having the charge of the legation.

The statements of the memorial are fully sustained by a letter from the Secretary of State, dated February 29, 1856, as to the time during which the affairs of our legation at Lisbon remained in Mr. Martin's charge, and the justice of his claim for compensation is strongly urged in a letter from Mr. Haddock, United States chargé d'affairs at Lisbon, dated January 18, 1853.

Regarding this case as being within the principle heretofore established in the allowance of similar claims, the committee report a bill for the relief of the memorialist, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 138.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 274.]

The Committee on Foreign Relations, to whom was referred the memorial of Townsend Harris, consul general of the United States in Japan, praying for compensation for his services in negotiating a treaty of commerce between the kingdom of Siam and the United States, have had the same under consideration, and now report:

It appears from the memorial that, after his appointment as consul general of the United States for Japan, and while preparing to leave the country and repair to his post, Mr. Harris was appointed by the President of the United States, a commissioner to negotiate a treaty of commerce with the kingdom of Siam. That this duty was performed by him in a manner satisfactory to his government at home, and occupied a period of ten months; during which, not having arrived at his consular post, and no special provision being made for such a case under the general law, he could receive no compensation whatever for his services.

These statements are fully sustained by a letter from the Secretary of State, under date of March 2, 1857, in which the Secretary adds: "It is usual to make compensation to commissioners for negotiating treaties, and I recommend that provision be made for paying Mr. Harris for this service."

Concurring entirely with the Secretary of State in this view, the only question remaining to be considered is, as to what amount should be allowed. Referring to the precedents heretofore established, the committee finds that it has been usual to allow one year's salary to the officer negotiating a treaty for each treaty negotiated by him, together with a reasonable allowance for the expenses incurred by him, in addition to his regular salary for the time so occupied. Adopting this rule, the committee recommend the allowance of ten thousand dollars as compensation for his services and expenses in negotiating said treaty, which is deemed to be but reasonable, and they report a bill accordingly.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 139.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill S. 275.]

The Committee on Revolutionary Claims, to whom was referred the petition of Frederick Vincent, administrator of James Le Caze, surviving partner of Le Caze & Mallet, having had the same under consideration, beg leave to adopt a report made by Mr. Shields at the last session, as expressing the views of the committee:

"It appears that the sum of $4,890 82 was due to Le Caze & Mallet on the 1st of July, 1784, for advances made and supplies furnished to the United States during the revolutionary war, under an adjustment by the Superintendent of Finance. This balance was duly stated upon the books of the confederation under that date, and was reported to Congresss with a view to providing for its payment.

"In view of the inability of the government to liquidate these demands, Congress, on the 3d of June, 1784, enacted 'that an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished or services done from the time that payment became due.' In 1790, the government still being unable to pay these claims, Congress, by act of August 4, 1790, authorized the funding of these debts by a subscription to a loan, as therein provided. By the act of May 30, 1794, these debts being yet unsettled, Congress extended the provisions of the act of 1790, declared that interest shall be allowed upon all registered claims, whether subscribed or not; and these provisions were continued by subsequent enactments, from time to time, to December 31, 1797.

"This debt was registered upon [transferred to] the books of the treasury of the present government in 1794.

"In consequence of the death of Le Caze & Mallet, as will be seen by reports heretofore made in this case by the committee, it appears that no demand for payment of this claim was made from 1797 to December 31, 1844; and the committee are unwilling to allow interest during that period, it being assumed that the government was always, after 1797, ready to pay its just debts when called upon. They have, therefore, directed a settlement to be made under the positive provisions of the act of 1790, above referred to, with an allowance of interest

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from December, 1844, when the administrator made demand for payment, as exhibited by the records of this case.

"On January 31, 1855, Congress passed an act providing for the payment of the original debt, but omitting the interest; and the committee, considering the claim as justly entitled to interest under the several acts before cited, as well as from the date of demand in 1844, report a bill accordingly."

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 140.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. GRIMES submitted the following

REPORT.

[To accompany bill S. 277.]

The Committee on Pensions, to whom was referred the petition of Peter Van Buskirk, praying to be allowed a pension for his services as assistant commissary in the revolutionary war, having had the same under consideration, beg leave to report:

That it appears he has been allowed a pension of $60 per annum for eighteen months service as a private; that when he made his original declaration, he was not aware that the different grades, or length of service, made any difference in the amount of pension due, and therefore did not claim his services as assistant commissary.

Stephen Lutkins, aged ninety-five years, testifies that he was well acquainted with petitioner during the revolutionary war, and that he knows he acted as assistant commissary.

Stephen Westervelt, aged ninety-one years, and Elizabeth Hopper, aged eighty-seven years, corroborate the above witness. All these witnesses are certified to be credible.

Two papers are furnished, purporting to be receipts for forage received from petitioner as an assistant commissary.

In view of the above facts—of the petitioner's revolutionary services and of his advanced age, being about ninety-eight years old—the committee report a bill, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 141.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. BRAGG made the following

REPORT.

[To accompany Bill S. 278.]

The Committee on Claims, to whom was referred the memorial of Isaac Varn, have had the same under consideration, and report:

That they adopt the report made by the Committee on Claims at the first session of the Thirty-fifth Congress, which is hereto annexed, and submit a similar bill to the one then reported, and recommend its passage:

IN THE SENATE OF THE UNITED STATES, *April* 30, 1858.

The Committee on Claims, to whom was referred the memorial of Isaac Varn, have had the same under consideration, and thereupon report:

The testimony filed by the memorialist in support of his claim embraces a large number of official letters, certificates, and numerous affidavits, all of which your committee have carefully examined.

At the first session of the Thirty-third Congress, the Committee on Claims having this case before them, submitted the following report upon it, together with a bill for the petitioner's relief, which report and bill your committee adopt, and they recommend the passage thereof:

IN THE SENATE OF THE UNITED STATES, *January* 19, 1854.

The Committee on Claims, to whom was referred the petition of Isaac Varn, senior, report:

It appears from satisfactory evidence that the land and buildings of the petitioner, situated in Duval county, Florida, were occupied by the United States troops as a military post from April, 1836, until the month of June, 1841, and that a large quantity of wood and timber belonging to him was cut and used by the troops.

The petitioner also claims compensation for cattle and sheep taken by the troops, and indemnity for the destruction of his fruit trees,

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fences, and other improvements, and for other losses growing out of the military occupation of his place.

It appears that Mr. Varn entered upon this land, being unappropriated public land, (sec. 12, township 5, range 24 E.,) in 1823; in 1826 or 1827 he erected a house thereon, in which he has continued to reside.

On the 31st March, 1838, (as shown by the records of the General Land Office,) he entered lots 3, 4, and 5, of said section, under the preëmption act of 1834—said lots containing in all one hundred and thirty-three and one fourth acres; and in 1839, he purchased lots 1 and 6, containing fifty-three and one fourth acres.

The occupancy of the place as a military post during the period named is shown by statements from the War Department, and from the officers in command; also, that wood and timber were cut for the use of the troops.

As to the amount of compensation to which the claimant is entitled, the testimony is not very explicit or satisfactory, with the exception of the accompanying letter from General Twiggs, in answer to inquiries addressed to him by the chairman of the committee, in which he says he does not think six or seven thousand dollars by any means extravagant.

Believing that the claimant is clearly entitled to relief, the committee report the accompanying bill, and recommend its passage.

NEW ORLEANS, *January* 5, 1853.

SIR: Yours of the 28th December is received. The troops did not occupy the land of Mr. Varn *by my order*. I found them posted there when I assumed the command in East Florida. There was a written agreement between Mr. Varn and myself, which was lost among my papers in Mexico, and I do not recollect the amount he was to receive. I made the arrangement with him for the reason that it came under my own observation that his timber was used by the United States, and the troops destroyed his fences, &c. He informed me that he had applied to several officers, and they would not make an arrangement with him, as they considered the land was the property of the United States. As the commanding officer, I deem it right and proper that he should be paid. I understand he claims some six or seven thousand dollars.

This sum I do not think by any *means extravagant*. He is an industrious and worthy citizen; and I do not think he would set up a claim for anything that he was not entitled to.

I am, sir, very respectfully, your obedient servant,

D. E. TWIGGS.

Hon. R. BRODHEAD,
United States Senate, Washington, D. C.

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IN THE SENATE OF THE UNITED STATES.

March 13, 1860.—Ordered to be printed.

Mr. Bragg made the following

REPORT.

[To accompany bill S. 280.]

The Committee on Claims, to whom was referred the memorial of Thomas M. Newell, have had the same under consideration, and submit the following report:

It appears that the memorialist was a master commandant in the United States navy, and that by the decision of a court-martial, he was, on the 15th October, 1834, suspended for two years from his command, nothing being said about his pay. One half of his monthly pay was however stopped at the Treasury Department.

The Court of Claims decided in the year 1856, that his pay was illegally withheld, and reported a bill in his favor for the sum of $1,455, being the amount detained, which was passed by Congress, and the money paid to him in the month of March, 1857.

He now asks that interest shall be paid to him on the said sum from the 15th of October, 1836, when the same was due, to the month of March, 1857, when it was paid, especially as he had been compelled to pay interest to the government upon a debt due to it, the facts in relation to which he sets out in his memorial.

The committee are of opinion that as the amount due to him was illegally detained, and was an ascertained liquidated sum, he should be allowed interest, and therefore report a bill for his relief, and recommend that it do pass.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 143.

IN THE SENATE OF THE UNITED STATES.

MARCH 13, 1860.—Ordered to be printed.

Mr. ANTHONY made the following

REPORT.

[To accompany Bill S. 281.]

The Committee on Naval Affairs, to whom was referred the petition of D. G. Farragut, having had the same under consideration, report:

That it appears from facts before your committee, the petitioner, a captain in the navy, was in command of the navy-yard at Mare Island, California, from the 9th day of August, 1854, to the 16th day of July, 1858; and that, whilst in that position, he was authorized by the Navy Department to rate or enlist two master's mates for the United States ship Warren; that the petitioner made the appointments authorized with a compensation at the rate of $450 per annum, or $150 a year to each, over and above the usual pay, the Warren then being stationed at that port; and, as the petitioner alleges, an amount insufficient for the support of an officer in California; and that the pay of the lowest class of laborers in the navy-yard, at the time of his command, was three dollars a day. The rate of pay authorized by the commandant was subsequently, on the adjustment of his accounts, disapproved at the Navy Department, and the difference between that and the amount authorized upon other stations charged against Captain Farragut's individual account, thus leaving him no other remedy than an appeal to Congress.

Extra compensation has, in almost all cases, been allowed to officers of the government in California, on account of the known high cost of living; and your committee deem that Captain Farragut should be allowed the reasonable difference paid by him for temporary officers, suitable to the care of large amounts of public property, whose appointment was in lieu of officers of a higher grade in the navy; and they therefore report the accompanying bill, with a recommendation that it do pass.

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IN THE SENATE OF THE UNITED STATES.

MARCH 14, 1860.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany Bill S. 286.]

The Committee on Naval Affairs, to whom was referred the petition of Eliphalet Brown, jr., asking for compensation for services rendered as an artist in the Japan expedition, have had the same under consideration, and ask leave to submit the following report:

The authority to employ artists for the Japan expedition was not directly conferred by Congress on the department having charge of it. As the employment of artists was so very essential to the success of an expedition like that in charge of Commodore Perry, the failure on the part of Congress to confer the authority may be safely charged to inadvertence rather than design. Commodore Perry foresaw what he supposed must be the evil results of this inadvertency, and engaged artists to join the expedition. They were enlisted as master's mates, with the understanding and expectation that they would seek a suitable compensation from Congress after the return of the expedition.

It appears from the rolls on file in the Treasury Department, that Mr. Brown served as master's mate on board the several vessels of the Japan expedition from the 24th of March, 1852, to the 15th of December, 1854, two years, eight months, and twenty-two days, for the insufficient sum of $300 per annum. He was the daguerreotypist of the expedition, as well as draughtsman, &c., and to him the country is undoubtedly largely indebted for much of the accurate delineations of the inhabitants, costumes, buildings, landscapes, &c., of that remarkable and heretofore almost unknown people and country.

Besides being employed in various ways on shipboard and on shore, in different artistic employment, he provided himself with all the apparatus necessary to the daguerreotypist, and took over four hundred pictures, all of which became the property of the government, and many of which were used in illustrating Commodore Perry's work on the expedition.

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Commodore Perry, in a letter dated February 19, 1857, says: "I take pleasure in stating that Mr. E. Brown was employed as one of the artists of the naval expedition to Japan, and executed his work with talent and skill, and to my entire satisfaction."

As Mr. Brown left a profitable business, and joined the expedition on invitation of those having charge thereof, trusting to the equity of his country for only a just remuneration, your committee report a bill granting him a compensation at the rate of $1,500 per annum, for his entire services as artist and master's mate while attached to and engaged in the expedition.

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IN THE SENATE OF THE UNITED STATES.

MARCH 14, 1860.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of George P. Ihrie, having had the same under consideration, report:

The petitioner presents a claim—

For four months and sixteen days services in United States and Mexican boundary survey, as assistant civil engineer and astronomer, at one hundred and twenty-five dollars per month	$564 00
For mileage from Santa Fé, New Mexico, to New York city, 2,488 miles, "by the shortest route," at ten cents per mile	248 80
For mileage from New York city to Trenton, New Jersey, his home, fifty-seven miles	5 70
	817 50
Cr.	
By cash, one hundred dollars; commutation of rations, ten dollars	110 00
	707 50

The period charged in his account is from August 1, 1851, until his arrival at his home, December 16, 1851.

Payment of this claim was refused by the Secretary of the Interior, who was charged with the disbursement of the appropriation for this survey, because Mr. Commissioner Bartlett, in his dispatch of August 13, 1851, reports George P. Ihrie as having resigned, (Sen. Doc. 119, first session Thirty-second Congress, page 441,) and therefore not entitled to pay or transportation.

The committee, concurring in the opinion of the Secretary of the Interior, report that the prayer of the petitioner be refused.

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IN THE SENATE OF THE UNITED STATES.

MARCH 19, 1860.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 293.]

The Committee on Indian Affairs, to whom was referred the petition of Israel Johnson, of Cass county, Indiana, with accompanying evidence, respectfully report:

That it appears from the sworn evidence submitted that, at the attempted treaty with the Miami tribe of Indians, in the year 1833, at the forks of the Wabash, the said Johnson, at the request and under the direction of General William Marshall and General Nicholas D. Grover, Indian agents, hauled from Logansport to said treaty ground three loads of baggage and provisions for the United States, for which he was to receive from the United States forty-five dollars per load, making one hundred and thirty-five dollars. That he also hauled, by the orders of said agents, one load of baggage from the treaty ground to the payment ground of the Pottawatomies, on the Tippecanoe river, for which he was likewise to receive forty-five dollars.

That, while the said Indians were in council, he also, by the direction of the said agents, gave a public dinner to the chiefs and head men of the Pottawatomies, to promote the efforts to induce them to treat, for which he was to receive seventy-five dollars.

That he was also employed by said agents to transport six boys of the Pottawatomie tribe to Madison, on the way to the Choctaw Academy, in Kentucky, for which, on behalf of the United States, they agreed to pay him one hundred dollars.

He also sets forth that, by the direction of said Indian agents, being a hotel keeper at Logansport, he entertained and kept a large number of Indians and their horses, for some time prior to said attempted treaty, for which he charges two hundred and twenty dollars.

His whole claim thus amounts to five hundred and seventy-five dollars. But the last item above specified for entertainment of the Indians prior to the treaty is regarded by the committee as not being as much within the equity of the case against the United States as the other charges, although doubtless furnished by Mr. Johnson in good faith. Deducting that, would leave three hundred and fifty-five dollars, which we consider equitably due to the petitioner, having been authorized and requested by the officers of the United States,

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and all incidental to the formation of an important treaty with the Indians.

The rendition of these services and the reasonable character of the charges are both supported by abundant testimony. General Grover, one of the agents who requested their performance, thus testifies, and further declares that, "having been sub-agent or agent during the treaties by which most of the lands in northern Indiana were purchased of the Indians, the same power was authorized and exercised for expenses of this character." The testimony of Hon. Chauncey Carter, Hon. J. W. Wright, J. B. Duret, and J. Vigus, Esqs., amongst the oldest citizens of Logansport, who were cognizant of these services being performed, that they were authorized, and that the charges are reasonable, also accompany and corroborate the petition before the committee.

While other allowances of a similar character for services at the same time were allowed by the War Department, this claim was omitted, through the negligence of General Marshall, the chief agent and commissioner. On the failure of the treaty, the accounts were hurriedly made up during the night following, and the treaty ground abandoned early the next morning. Mr. Johnson was at that very time absent, hauling a load for the United States to the Pottawatomie payment ground, and being out of sight was forgotten in the hurry of the hour. General Grover, in his affidavit, explains this by allusion to the well-known carelessness, in the matter of accounts, of his superior.

It appears, also, from the evidence, that the reason why the claim has been so long pending is as follows: After Mr. Johnson found that his claim had not been certified, he appealed to General Marshall, who had ordered the services, to pay it himself, which he consented to do when he received money from Washington to pay the expenses; that after waiting a year, and in vain, Marshall then said he would have to certify it before it could be paid, which he then did in a book, although out of office, and the book itself was lost by an attorney employed by Johnson, and could not be found after the attorney's decease. Up to 1845, Johnson supposed Marshall would have to pay it himself, Marshall asking him to take trade for it, which he consented to do, but could never obtain.

Since that time his claim has been pending before Congress. It has been twice reported favorably, in the Senate and in the House, by their Committees of Indian Affairs, and in 1854 a bill for his relief passed the Senate, but failed to reach the House. The committee, therefore, recommend the passage of the accompanying bill as equitable and just, having reduced the claim to three hundred and fifty-five dollars.

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36th Congress, 1st Session. | SENATE. | Rep. Com. No. 147.

IN THE SENATE OF THE UNITED STATES.

March 19, 1860.—Ordered to be printed.

Mr. Hammond made the following

REPORT.

[To accompany bill S. 295.]

The Committee on Naval Affairs, to whom was referred the petition of William B. Shubrick, United States navy, have had the same under consideration, and report:

That during the war with Mexico, Commodore Shubrick, then in command of the naval forces in the Pacific, found it necessary, for the protection and advancement of the interests of the United States, to employ an interpreter and translator, and not being able to procure a suitable person elsewhere, devolved these duties upon his secretary, the nature of which will appear in the inclosed letter, fully corroborated by the facts and evidence in the case:

Washington, D. C., *February* 16, 1860.

Dear Sir: Having been informed that the amount paid me, in 1848, by the joint order and approval of Commodore T. Ap C. Jones and yourself, for services rendered the United States as interpreter, during the war with Mexico, has been charged to your personal account, and that you now have a petition before Congress seeking relief therefrom, I beg to state that the services which I then rendered as a translator and interpreter of the Spanish language, during the cruise of the frigate Independence, were absolutely necessary and indispensable to the service, and to yourself as the commander of the squadron; that there was no other person attached to the squadron who could have properly and efficiently performed said duties—none at Mazatlan, or or at any other port on the station which we visited, whom I would have considered, under the circumstances, competent to discharge said services.

I was not only called upon to translate the many communications received directly by you from the Mexican authorities and other parties, but also those which were received by the commanders of the other vessels composing the squadron.

The additional and overwhelming duties thus imposed upon me were much greater than any one person could well have performed,

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without working day and night, as I frequently did, and the very kind and ready assistance afforded you in the English department by Lieutenant William W. Russell, of the United States marine corps.

Besides, you had not been allowed a clerk by the Navy Department —a custom which, previous to said cruise, prevailed in the navy, and which, I understand, has since been again introduced, as the secretary to a squadron cannot alone reasonably perform the vast amount of writing and copying, even in time of peace, which he should perform in order to faithfully discharge his duties.

During the war with Mexico, you were fully authorized by the President, as commander-in-chief of the army and navy, to levy military contributions upon the enemy, and to disburse the same "for the purposes of the war." I considered myself justly entitled to compensation for my *extra* services as an interpreter and translator, which services were caused by and grew out of said war. I applied for the same and received it, Commodore Jones *concurring* fully with you in the equity of the claim and the propriety of its payment.

The sums collected as military contributions, after deducting therefrom such as had been expended "for the purposes of the war," as provided for by the President, were subsequently returned into the treasury by an act of Congress, thus showing that these moneys were not under the control of the Treasury Department, and only became so after the said enactment.

I considered then, as also many others in the squadron, that you, as commander-in-chief of the squadron, had full authority to disburse said moneys. I still adhere to the same opinion.

A reference to your very voluminous and interesting correspondence with the Navy Department, will best attest the arduous duties which I rendered, while honored with an appointment under your command.

Independently of these considerations, I respectfully hold that the secretary to a squadron is not, necessarily, under obligation to perform the duties of a translator and interpreter, there being neither law nor regulation to that effect; and the confidence you reposed in my ability and fidelity, prompted me to perform said duties, independently of those of a secretary.

I am, sir, very respectfully, your obedient servant,

H. R. DE LA REINTRIE.

Com. Wm. Branford Shubrick, *U. S. Navy.*

The salary of the secretary was $1,000 a year. The amount paid to the interpreter and translator was $1,550, and had he been taken from the shore would have been allowed at the department, but Mr. La Reintrie being at the time an employé of the government and receiving a salary, could not be paid any extra compensation for any service rendered beyond those of secretary. The amount, therefore, stands charged upon the books of the treasury against the accounts of Commodore Shubrick.

The following letter from the Attorney General will more fully explain the law controlling the officers of the government in the premises:

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ATTORNEY GENERAL'S OFFICE, *November* 10, 1858.

SIR: It appears from your letter of the 5th instant, and the papers by which it is accompanied, that Mr. Henry La Reintrie, in the year 1848, was on board the Independence, the flag ship of the Pacific squadron. He was rated on the books of the vessel as commodore's secretary, and for the services he performed in that capacity he was entitled to receive, and did receive, the pay fixed by law and the regulations. He could not, therefore, receive any extra allowance or compensation in any form whatever for any service which it was possible for him to render, either within the line of his duty or outside of it, without a plain violation of the act of 1842. On this subject my advice was asked by and given to the Secretary of the Interior on the 17th of October, 1857; and I adhere to the construction of the statute which I then, after careful consideration, thought the true one.

During the time Mr. La Reintrie was acting as commodore's secretary, he was employed as interpreter of Spanish and French, for which service outside of his duty as secretary, the commodore considered him entitled to the sum of $1,550, and approved of his account against the government for that amount. The purser of the vessel paid it upon being ordered a second time by the commodore to do so; but he failed to get it allowed by the Fourth Auditor when he came to settle his accounts. It stands now disallowed on the books of the Treasury Department, and charged, it would seem, to Commodore Shubrick. It is impossible for me to give you any advice under which you can lawfully relieve the Commodore from the obligation of refunding it. Of course, his order upon the purser to pay it was made in perfect good faith, and under the conviction that it was legal as well as just. I take the statements contained in his letter to the Fourth Auditor, every word of them, for absolute verity, and I have permitted all the considerations he mentions there to have their due weight. Commodore Shubrick *did* collect a large amount of money upon the Pacific coast; Mr. La Reintrie's services as interpreter *were* necessary to him; the Commodore *might* have evaded the law which prohibits this payment if he had thought proper to do so; and the government probably *has* gained largely by the whole transaction. These are reasons which would appeal powerfully to Congress, who can make and unmake the law at its pleasure. But the natural and abstract justice of a claim is not a reason why the Executive should pay it in defiance of a law which forbids it. After giving this very decided opinion against the legal right of the Navy Department, and the accounting officers to make the allowance, I cannot close without expressing the hope that relief will be afforded to Commodore Shubrick in some other form.

I am, very respectfully, &c.,

J. S. BLACK.

Hon. ISAAC TOUCEY,
Secretary of the Navy, Washington, D. C.

The Secretary of the Navy, the Attorney General, and the Auditors of the Treasury, to whom the claim was presented, considered it one calling for relief from Congress, in which your committee unanimously concur, and report the accompanying bill, with the recommendation that it pass.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 148.

IN THE SENATE OF THE UNITED STATES.

MARCH 21, 1860.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 297.]

The Committee on Claims, to whom was referred the memorial of Van Camp & Chapin, concurring in the report made by the Hon. Miles Taylor, of the Committee of Claims of the House of Representatives of the last Congress, hereby adopt the same as the report of this committee in the case aforesaid. The said report is as follows:

IN THE HOUSE OF REPRESENTATIVES, *March* 3, 1859.

The Committee of Claims, to whom was referred the memorial of A. Van Camp and V. P. Chapin, asking compensation for property of which they allege they have been deprived, at Apia, in the Navigators Islands, by the wrongful acts of the commercial agent of the United States, exercising authority there, have had the same under consideration, and now respectfully report:

The allegations contained in the memorial, and the facts stated in several depositions accompanying it, were of such a nature that your committee deemed it proper to apply to the State Department for any information it might be in possession of connected with the various transactions which, in the opinion of the memorialists, gave rise to the claim preferred against the United States. In answer to the application made to it, that department laid before the committee an immense mass of original papers, embracing everything in existence which was calculated to throw any light upon the subject before the committee, but intermingled with a vast deal of matter that could have no bearing upon it. These papers have all been examined with as much care as the time at their disposal would allow; and the committee will now give such a narration of the facts disclosed by those papers as seems necessary for the proper decision of the question presented by the memorial, without entering into any very extended or particular detail of them.

Mr. Chapin had been for some time commercial agent of the United States at Apia, in the Navigators Islands, when he was superseded by Mr. Van Camp, in 1854. Mr. Chapin was engaged in carrying on a commercial business whilst he acted as commercial agent, and Mr. Van Camp, when he arrived at his post, entered upon the same

pursuit, and provided himself, by the purchase, &c., with the land and buildings necessary for the prosecution of his trade and for the accommodation of the members of his family, by whom he was accompanied. After the arrival of Mr. Van Camp, it seems that he and Mr. Chapin carried on business each on his own account, until some time in the spring of 1855, when they formed a commercial partnership, under the name and style of V. P. Chapin & Co. The business carried on by the partnership appears to have been considerable, and to have required for the prosecution a very considerable stock of merchandise and several establishments.

Whilst Mr. Van Camp was thus engaged in carrying on a mercantile business, he also gave his attention to the proper business of his office of commercial agent; and it is shown by the papers before the committee that his conduct in his official capacity, in various instances, gave rise to complaints against him on the part of those who were affected by it. Reports growing out of the complaints against him, and injurious to his character, were widely circulated in various ports on the Pacific; and it is altogether probable that some of them were communicated to the State Department, though there is no direct evidence to that effect before us. During this same period, also, difficulties grew up between Mr. Van Camp, in his capacity of commercial agent for the United States, and Mr. Pritchard, the British consul, which led to much angry discussion, and at last terminated in an appeal on the part of Mr. Pritchard to Captain Fremantle, of her Britannic Majesty's navy, who was in those waters with his ship, the Juno. And, in addition to these difficulties with Mr. Pritchard, the British consul, Mr. Van Camp had another with divers residents of Apia, in relation to a road, or street, or right of way, in which different holders of property near the bay were interested, in which Commander Bailey, of the United States navy, intervened in some way.

Mr. Van Camp left his post on the 12th of May, 1856, on board of the United States ship Independence, with his family, for Valparaiso. The cause of his departure for Valparaiso, he states, was the necessity of going there to look after the disposition of a large amount of property belonging to American citizens, which was there in his possession. This property consisted of the cargo of the American whale ship Rambler, which arrived at Apia in distress, in December, 1855. That ship having been condemned as unseaworthy, the cargo had been placed in the warehouses of the memorialists, by the master; and he not being able to dispose of it, after some three months' stay, had given it in charge to Mr. Van Camp, with authority to him to make the best disposition of it in his power for all concerned. Some time having elapsed without Mr. Van Camp having an opportunity to make any disposition of this property at anything approaching a fair price, he determined to ship it to Valparaiso, and for that purpose he chartered the schooner Eudorus, Captain Seaman, for $4,000, to proceed to Valparaiso. The cargo of the Rambler, with some property of the memorialists to complete the lading, was shipped on the Eudorus before the departure of Mr. Van Camp; and when he left Apia on the 12th of May, 1856, in the Independence, it was expected the Eudorus would have followed in a few days. This, however, was not to be.

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Many months before this Mr. Van Camp had been superseded in his office of commercial agent of the United States for the Navigators Islands, by the appointment of one Jonathan S. Jenkins to the place. What was the cause of the removal of Mr. Van Camp does not appear. It is more than likely that it was produced by the reports in circulation to his injury, though nothing of the sort appears from the papers, and there is nothing to show that any inquiry into their truth was ever instituted under the direction of the State Department. Upon whose recommendation, or upon what information Jenkins was appointed, is unknown to your committee. But a more unfit person to fill any place—and least of all a place of such responsibility beyond the confines of civilization—it is entirely apparent from his own correspondence with the State Department, and from other evidence, could not well have been selected.

Mr. Jenkins left San Francisco, California, in the early part of March, 1856, in the schooner Jeannette, bound for the Navigators Islands, and was accompanied on his voyage by Thomas F. Martin and James M. Conway, two persons who claimed to have been injured by Mr. Van Camp in proceedings taken by him in his official capacity, with respect to the American barks St. Mary and Elvira. It appears from the affidavit of Samuel J. Agnew that Jenkins, before leaving San Francisco, declared he was "going to the islands to arrest Van Camp and seize and sell his property to pay Martin and others who claimed to have been robbed by Van Camp," and, on the voyage, frequently stated that "he had the power, if he caught Van Camp, to hang him, and that his power was equal to a king's." The same purposes, and the same exaggerated notions as to his powers, are also shown by the correspondence of Jenkins with the State Department. In his letter to the Secretary of State, of August 11, 1856, he says, in the course of a narrative of his proceedings after his appointment, that "California was rife with accounts of Mr. Van Camp's malversations, and it was reported that he had a gang of rascals at his back," and then remarks that he "felt anxious, but none the less resolute, determined to take life in the maintenance of the honor and dignity of *his office.*"

Information was given to Mr. Jenkins of his appointment by a letter from the State Department, dated on the 31st of December, 1855. His official bond was given at San Francisco on the 9th of February, 1856. On the 20th of February, 1856, he wrote to the State Department, as appears from one of his letters, mentioning his design of regarding the provisions of the act of Congress, entitled "An act to carry into effect certain provisions in the treaties between the United States and China and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," approved August 11, 1848, as having so extended an application as to clothe him, in the Navigators Islands, with the same authority. And, on or about the 6th of March, 1856, he sailed from San Francisco for his consulate, before it was possible for him to have any reply to that letter. While on his voyage thither, it seems, both from his letter to the department, inclosing copies of what he terms his "decrees," and from the deposition of Samuel J. Agnew, before referred to, that Mr.

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Jenkins made every preparation necessary to give what would seem to be the forms of law, in the eyes of ignorant or interested men, to the extraordinary course of violence meditated by him. At that time he prepared and signed papers in which he assumed to create a consulate court of the same character and clothed with the same powers with those provided for in the act just referred to, approved on the 11th of August, 1848, and proceeded to appoint a clerk for the court to be organized, and a marshal to execute its process. Robert S. Swanston and Samuel J. Agnew, who were passengers with Mr. Jenkins on the schooner Jeannette, were appointed to the places thus created by him, and were sworn in to their respective offices before the schooner entered the harbor of Apia.

It further appears from the letters of Mr. Jenkins to the Department of State, and from the papers accompanying these letters, which are now before the committee, that the schooner Jeannette, with Mr. Jenkins and his newly appointed officials on board, arrived off the harbor of Apia on the evening of the 16th of May, 1856, and that Mr. Jenkins having, upon inquiry, learned from the pilot who came on board of the schooner, that Mr. Van Camp had left Apia, but that a vessel, which was to sail the next day for Valparaiso, was then in the harbor laden with property of his, sent Martin and Conway ashore to request Mr. Pritchard, the British consul, to detain the vessel in question until his (Jenkins's) arrival in port. The British consul, in conformity with this request of Mr. Jenkins, detained the vessel.

On the next day, Mr. Jenkins entered the harbor of Apia, and his marshal, acting under the authority of an order signed by Jenkins, on the 16th of May, 1856, and directing him to take possession and control of "all the property of or belonging to Aaron Van Camp, late United States commercial agent for Apia, wherever it may be found, and of whatever kind or description it may be," &c., proceeded to take possession of the property laden on board of the Eudorus, and to seize the private dwelling of Van Camp, together with the buildings, merchandise, &c., belonging to V. P. Chapin & Co., in which Van Camp had an interest.

But this was not all. On the same day Mr. Jenkins made another order in the following words:

"UNITED STATES CONSULAR COURT, APIA, IN THE ISLAND OF UPOLA, NAVIGATORS ISLANDS.

"*The President of the United States of America to the marshal of the United States for the consulate of Apia and his deputies, or any of them, greeting:*

"Whereas an oath has been made to me charging that Aaron Van Camp did, on or about the 16th of May, 1855, unlawfully and piratically and feloniously seize and take possession of the American bark 'St. Mary,' within the jurisdiction of the consular court of the consulate of Apia:

"Now, therefore, you are hereby commanded, in the name of the President of the United States, to apprehend the said Aaron Van Camp,

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and keep him in safe custody until he be dealt with according to law.

"JONATHAN S. JENKINS,
"*United States Consul and Vice Commissioner for the Consulate of Apia, Navigators Islands.*"

What scenes of violence and blood might have followed an attempt to execute such an order, out of the sphere of any civilized government, by misguided or designing men, no one can tell. Luckily, for the reputation of the United States, the absence of Mr. Van Camp, on his voyage to Valparaiso, left Mr. Jenkins no opportunity "to take life," in vindicating "the honor and dignity of his office," through the exercise of his usurped powers, as he says in his letter of the 11th of August, 1856, he was prepared to do. The property of Mr. Van Camp, however, and that of other persons which had been confided to his care, was within Jenkins's reach, and he proceeded to work his will upon it through the agency of a series of proceedings, which were not only carried on without any shadow of legal authority, but were in themselves as iniquitous as they were illegal.

Soon after landing in Apia, Jenkins appointed three associate judges to sit with him in the consular court, established by the decree passed by him before his arrival. These "associates" were Horace D. Dunn and Josiah B. Leeds, the supercargo and captain of the Jeannette, in which he had come to the islands as a passenger, and Henry Seaman, the captain of the Eudorus, whose cargo had just been seized by Jenkins's order. When they were appointed does not appear; but their written acceptances of the "commissions" issued to them are among the papers, and bear date on the 22d and 23d of May, 1856; and two proceedings—one in the name of Thomas F. Martin, and the other in the name of J. M. Conway, and which were entitled cases "in admiralty"—were then instituted, before the court so organized, against Mr. Van Camp, and were carried on with such speed that they were brought to a termination by final decrees bearing date on the 29th and 31st of May, 1856, upon which executions were immediately issued.

All the property on board of the Eudorus, though a large portion of it belonged to third parties, together with the other property previously taken possession of under the orders issued by Jenkins on his arrival, was seized as the property of Van Camp under these executions, and sold at auction on the 2d day of June, 1856, the third day after the seizure. Your committee have not found among the papers any detailed report of this sale, showing what was sold, or what were the prices paid for the different species of property, or who were the purchasers; but there is a statement among the papers before them, dated June 16, 1856, and which was sent to the Department of State by Mr. Jenkins, with his letter of the 30th of September, 1856, from which it appears that the proceeds of the sale made by the marshal, on the 2d of June, 1856, amounted to $16,993 16; and that, after deducting from that amount the sum of $1,877 31 for the marshal's fees, and other "cash expenses" of the proceedings had, the remainder, forming the sum of $15,115 85 was paid into the consular court. Accompanying this statement is another showing how this sum was disposed of. From

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that statement it seems that the further sum of $431 25 was appropriated to pay the fees of the clerk and court; that $4,000, the full amount to be paid to Captain Seaman, master of the Eudorus, under his charter-party, for the freight from Apia to Valparaiso, of the property shipped on it by Mr. Van Camp, have been paid to Captain Seaman, although his vessel had not left the harbor; that $9,606 60 had been paid to Martin in part satisfaction of his judgment; and that a balance of $1,077 90 still remained at that time in the consular court.

What was the real value of the property thus sold and disposed of your committee have no means of knowing; nor is it, perhaps, of any importance that it should be known, to enable the House to act in a proper manner on the question presented to it by the memorialists. There can be no doubt, however, when all the circumstances are considered, that the property put up at sale, under the authority of Mr. Jenkins, was wantonly sacrificed, to the grievous injury of all those having an interest in it. And the question then arises, have the memorialists any claim, legal or equitable, upon the United States in the case presented by them; and, if so, then what is the extent of that claim? Does it reach to the value of the whole property of which they were deprived by the action of Jenkins? Or is it to be diminished because a portion of it was really applied to the payment of a debt or debts legitimately due by them? Before entering on the question as to the existence of any liability at all to the memorialists on the part of the United States, your committee think it best to dispose of the question as to there being any indebtedness on the part of Van Camp, one of the memorialists, to either Conway or Martin, in whose names the proceedings carried on by Jenkins were instituted.

J. M. Conway preferred a claim against the effects of Aaron Van Camp for the sum of $6,585, for the value of the New Granadian bark Elvira, which had been some time before sold, as he alleged, by the authority of Mr. Van Camp, acting in his capacity of commercial agent.

The facts in relation to the sale of the Elvira, as shown by the original papers before us, are briefly these. The bark Elvira, Captain E. Alley, master, arrived at Apia from San Francisco, bound to Sidney, on the 26th April, 1855, and among the persons on board was one P. S. Colby, who claimed to be the owner of the bark, and was so admitted to be by the master. On the same day the master of the bark, E. Alley, and P. S. Colby, went before Mr. Van Camp, as the commercial agent of the United States at Apia, and made a protest in relation to this bark, styling it the "American bark Elvira, of San Francisco." In this protest, which was signed by them both, various charges of misconduct were made against Jesse L. Atwood, first officer of the bark, and prayed that he, Atwood, might be discharged from the vessel and dealt with according to law. The following day P. S. Colby, calling himself the owner of the American bark Elvira, went before Mr. Van Camp in his official capacity, and, together with J. M. Coe, Lewis Bartlett, then mate of the bark, and Robert Stanley, declared upon oath that the passengers and crew of the vessel were in a state of insubordination and mutiny, and in consequence of this fact, Mr. Colby then, in the same written instrument, called on Mr. Van

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Camp, as the United States consul, "to take into his possession the said bark and cargo, and to make the best arrangement he could for the benefit of all parties concerned." On the next day, (the 28th of April, 1855,) the master of the bark, Captain Alley, stated under oath, that he had had great difficulties with her passengers; that on his voyage from San Francisco they had used very abusive language towards him, and threatened to take his vessel; and that since his arrival at Apia, "a mob of some twenty" of them had "come to the house on shore where he was sick, and said that he should go no further on the voyage; and that in the evening of the same day they had repaired on board the ship, drove the mate away, and taken possession of her." In this statement Captain Alley declared that he and Mr. Colby, the owner, who was a passenger with him, were American citizens, and calls on Mr. Van Camp as the United States commercial agent, to take possession of his vessel, the bark Elvira.

After this, thirty-one passengers on the bark addresssed a letter, dated on the 30th of April, 1855, to Mr. Van Camp, as the United States commercial agent, and to G. Pritchard, as the British consul, jointly, in which they style the bark the New Granadian bark Elvira, and make a statement of the grievances under which they say they had been and were still laboring. They represented that they had been detained in San Francisco "about a month while on board of the bark," owing to an insufficiency of funds on the part of the owner or owners; that they had sailed from San Francisco with rotten rigging and rotten sails; that they were then without fresh provisions of any kind; that there was neither captain, mate, steward, or sailors on board; and that they were left in the vessel, out in the harbor, without a supply of good fresh water, and without any means of communicating with the shore. They further asserted, that it was admitted by Captain Alley himself that the bark could not proceed to sea without a cash advance of three or four thousand dollars to procure the sails and rigging and provisions necessary for the voyage; and as they had no confidence in Captain Alley, who, they said, got frequently intoxicated, and was unfit to be intrusted with the command of the vessel, they therefore begged leave to place their interests under the joint protection of the two functionaries, inasmuch as their different nationalities authorized both of them to interpose in their behalf. This letter of the passengers was followed, on the 2d of May, 1855, by a statement addressed to the commercial agent and signed by Lewis Bartlett, the first officer, and five seamen belonging to the bark, in which they "complain that the said bark is not safe, or in a suitable condition to go to sea, because she is insufficiently supplied with sails, rigging, and provisions."

Acting on these various representations and statements, Mr. Van Camp ordered a survey of the bark. This survey was made on the day after the representations and statements were presented; and the two "master mariners," Captain Richard M. Jackson and Captain Henry Seaman, who made it, reported it as their opinion that the vessel had been well provided, but that at that time she stood in need of a number of new sails, and that the running rigging, fore and aft, should be replaced; and they also found that the expense of supplying

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her with extra provisions for her voyage would amount to sixteen hundred dollars, "or thereabouts." After this survey was made, no progress whatever was made in getting the vessel ready for sea; and on the 28th of June following, Captain Alley made a declaration in writing, to the effect that he could "not raise money by bottomry or in any other way," and that as his crew had had a survey held on the vessel and she had been condemned, and he was not able to make the necessary repairs, &c., and his crew insisted on being paid off, and that therefore he, "E. Alley, mastsr of the said bark," consented that Aaron Van Camp should "sell the said bark at public auction, for the purpose of paying the crew and other lawful claims against her."

Acting under the authority of law, and of the formal request of the master of the vessel, Mr. Van Camp proceeded to sell the Elvira at auction, to the highest bidder, on the 2d of July, 1855, when P. S. Colby, her owner, being the highest bidder, she was struck off to him for the sum of $1,200. This sale was ratified by Captain Alley, who executed a formal act of sale for her to Colby on the 3d of July, and on the 5th of the same month relinquished the command of her and turned her over into the possession of Colby as the purchaser.

What became of the cargo of the Elvira does not appear from the papers, but it clearly appears that it was disposed of by the authority of Captain Alley, as there is an order from him to Van Camp, dated on the 17th of July, 1855, in which he directs him to deliver twenty boxes of tobacco, which he had left with him, to P. S. Colby, and "to settle with him for all of his claims and demands against the sixty thousand feet of lumber" which he had landed at his place from the bark Elvira.

From this recital of the facts disclosed by the records of the State Department relating to this transaction, it would seem that the bark Elvira was disposed of with the authority of law, and of the master and of the reputed owner, and that no liability could attach to Mr. Van Camp for his acts, even though it were true that J. M. Conway was the real owner of the Elvira at the time of her departure on her voyage from San Francisco. But there is reason to believe, from what appears in the papers before us, that Conway had no real interest in the vessel. The only evidence of title presented before the court created by Jenkins, on the part of Conway, was a sale purporting to have been executed in San Francisco on the 19th of February, 1855, to James M. Conway by one Jesse L. Atwood. No evidence of title in Atwood was offered or shown to exist. Now it appears from the papers in the State Department that there was a Jesse L. Atwood on board of the Elvira in the capacity of first officer or mate, on her arrival at Apia, and that he was dismissed from the vessel there, by the authority of the commercial agent, for misconduct, on charges preferred by Captain Alley and P. S. Colby, the reputed owner. In the absence of proof to the contrary, is it not fair to presume that the Jesse L. Atwood who was on the bark Elvira, in the port of San Francisco, as mate, at the time the pretended sale to Conway was made, and who was dismissed from the bark in Apia, for misconduct, was the same Jesse L. Atwood who made the sale set up by Conway, and one and

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the same person? If that were so it would be entirely in keeping with all the other features presented by this case.

The suit of Conway against Van Camp in Jenkins's consular court, as appears from a copy of the record now before us from the State Department, was instituted on the 29th of May, 1856, and proceeded with such remarkable celerity and convenient expedition, that it was brought to a conclusion by a final decree rendered on the 31st of the same month, the second day after it was begun. But this was not by any means the most extraordinary circumstance in the case. Among the evidence laid before the court, though it seems that much of the most important must have been purposely kept out of sight, there was enough to show the real nature of the transaction, so far as Mr. Van Camp was concerned, and in consequence the "associate judges" decided unanimously that if Conway was the true owner of the bark, the case presented was one of barratry of the master, "and that no just cause of complaint" could lie "against the said Aaron Van Camp," &c. This decision, made on the 30th of May, 1855, was not in accordance with the views or wishes of Jenkins, and on the next day, in violation even of the provisions of the very act under which he pretended to derive the extraordinary powers he had been exercising, he overruled that decision, and proceeded to make a decree condemning Van Camp to the payment of $6,589 as damages, and the costs of the proceedings.

We will now turn to the other claim—that of Thomas F. Martin. This claim against Mr. Van Camp, as made before the consular court of Jenkins, was for the sum of $20,001 42, for the value of the American bark St. Mary and her cargo, which he alleged Mr. Van Camp had unlawfully and felonously converted to his own use, and for the loss of the profits which he might have realized by the use of the vessel from the day of seizure until the claim was preferred, and to compensate him "for the griefs, ill-usages, and hardships which the conduct of Van Camp had entailed on him." The sum total is made of various items set forth by Martin in detail, among which are the following:

First cost of the St. Mary	$3,250 00
Expenses incurred in fitting her for sea	2,322 62
Profits that he could have realized by the use of his vessel from the day of her seizure until the making of the claim, at the rate of $500 a month	6,000 00
For the griefs, ill-usage, and hardships entailed on him, &c	4,000 00

The facts in the case of the St. Mary, as shown by the papers before us, are these:

The bark St. Mary, Thomas F. Martin, master, from San Francisco, bound to Melbourne, arrived at Apia early in May, 1855, in distress.

On the 6th of May, 1855, Captain Martin wrote to Mr. Van Camp, as commercial agent, charging Francis Stanly, his first mate, and

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William Thurgood, his second mate, with gross disobedience of his lawful orders, both on the voyage from San Francisco and since his arrival at Apia, and complaining of the conduct of his passengers, and formally protested "against the said officers and passengers continuing on the voyage on the said ship with him." On the 7th of the same month, (the day following,) Captain Martin and his first mate, Stanley, made their protest before Mr. Van Camp, in his official capacity, in which they spoke of the severe weather which had put the bark in its distressed condition, and had led to the loss of a part of her cargo; and on the same day the second mate, with the carpenter of the barqne and four of the seamen, made their written complaint to Van Camp, as commercial agent, in which they represented that the St. Mary was not in a suitable condition to go to sea: 1st. Because she was in a leaky condition; 2d. That she was "insufficiently equipped with sails and running rigging; and, 3d. That her provisions were inadequate, both in quantity and quality, for the prosecution of her voyage. Upon these various representations, a survey of the St. Mary was ordered.

This order was followed by a survey made on the 2d of June, 1855, by John McClemens and James Parker, ship masters, duly appointed to make the same, who declared, upon oath, that, after a careful examination of the bark, they found "her hull very rotten and unfit for sea, unless she should have new topsides and deck." And they further stated that the cargo of flour and barley was "very much damaged." There is another instrument also among the papers, purporting to give the result of an inspection as to the condition of the "cargo" of the St. Mary, made on the same day, on the joint request of Captain Martin and Mr. Van Camp, by Joseph A. Wilson and Francis Stanley, Captain Martin's mate. The examination made by these persons did not extend to the condition of the vessel. It was limited to ascertaining the condition of her cargo alone, and beyond all doubt preceded the other. It was not, in any sense, an official act, as it was not verified by oath, but seems to have been a mere private paper, clothed with no official formality. Whatever may be the character of the paper, whether it be official or a mere private one, its contents fully sustain the propriety of the commercial agent's interference in the case, for it is distinctly stated in it that the vessel was found "in a neglected and dirty condition;" that "the passengers were in a state of mutiny and confusion, and apparently in charge of the vessel;" that "the body of the cargo" "was badly damaged on the bottom, in the wings, and on top, apparently caused by leaky bottom, side, and deck;" and that, "for the purpose of preserving a portion of the cargo, it should be all removed from the vessel;" and it is further declared that, "in the present condition of the vessel, it would be very improper to reship it in her."

It is proper to mention that another paper, of the same description with the one just spoken of, seems to have been executed by Henry Seaman and Joseph A. Wilson, bearing date on the 8th of May, 1855, as is stated in the record of the proceedings in the consular court of Jenkins, at the instance of Martin; that such a paper was produced, though the original of it is not to be found among the

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papers before us. This paper, however, like that executed by Wilson and Stanley, corroborates the correctness of the decision of the ship masters who held the survey ordered upon the bark, as the persons making it, after stating the result of their inspection of the vessel and cargo in detail, certify at the close of their report "that in her present state the vessel was", in their opinion, "unsafe to go to sea."

In consequence of these various proceedings and of the condemnation of the vessel as unseaworthy by the ship masters, who held a legal survey upon her, Mr. Van Camp ordered the vessel and cargo to be sold for the benefit of those whom it might concern; and it seems clear from all the evidence that this order, so far as it related to the sale of the cargo, was made with the full concurrence of Captain Martin. Whether Captain Martin did or did not consent to the sale of the bark also, is involved in more doubt. That sale was made on the 26th of June, 1855. Among the papers received in evidence by Mr. Jenkins's court in the case of Martin against Van Camp, is one dated on the 25th of June, the day previous, in which he protests against the sale of the bark, and declares that although the vessel had been condemned, he, as owner, still claimed the right of holding his own property and disposing of it at his own pleasure. There are other facts, however, shown by the papers, which seem to be inconsistent with this position of Captain Martin.

But it seems to your committee unnecessary to decide this question. Whether Captain Martin was or was not opposed to the sale of his vessel was immaterial. His ship had been condemned as unseaworthy. He was unable to repair and equip it in such a manner as to fit it for going to sea. The cause of the unseaworthiness of the vessel was the rottenness of the hull, a defect existing previous to the commencement of the voyage, so that his voyage was broken up in such a manner as to make the vessel liable for the wages of the crew, and there was, under all the circumstances of the case, legal authority in Mr. Van Camp, as commercial agent of the United States, under the act approved July 20, 1840, (5 Statutes at Large, 396,) to sell the vessel for the payment of the crew.

But this is not all. There is the fullest evidence among the papers placed before your committee by the State Department to show that Captain Martin neither had, or could have had, any claim against Mr. Van Camp growing out of this transaction. This necessarily results from the facts, first, that Captain Martin made a sale of the bark St. Mary on the 2d of July, 1855, to Joseph A. Wilson, who had succeeded to the rights of the person bidding her in at auction, for the sum of sixteen hundred dollars, the amount of the bid made at the auction, and in the act of sale made by him acknowledged the receipt of the price; and, second, that he gave a power of attorney to the same Joseph A. Wilson on the day following, in which he empowered him to demand, sue for, and receive, all sums of money due him, &c., and to make a final settlement of all matters appertaining to the bark St. Mary whilst lying in the harbor of Apia, under which a final settlement was made by his attorney in fact with Van Camp, and a full acquittance granted to him, on the 11th of October, 1855. It is, however, due to Mr. Van Camp to say, that the papers before

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the committee show that the total of the sales made by him of the bark St. Mary and her cargo amounted to the sum of $9,081 85; and that it appears from the settlement made with Joseph A. Wilson, the attorney of Martin, on the 11th of October, 1855, Martin himself had received the sum of $4,357 30 from Van Camp prior to the 12th of July, 1855; that the sum of $2,000 only was paid over to the attorney in fact on the settlement, and that the remainder of the total amount of the sales of the bark and her cargo had been appropriated to the payment of the wages of the officers and crew and of the expenses incurred, and of certain notes given by Captain Martin to persons on board for advances of money.

In the absence of all explanation, it would excite surprise that any court, no matter how illegally created or constituted, should be able to make such a decision as that given by the consular court of Jenkins with reference to a case like that of the St. Mary, when the facts involved in it were of such a character as to almost necessarily have great publicity, and all of them had transpired in the very place where the court was holden. But in the present instance there is no room for surprise when all the circumstances connected with the transaction are considered.

The pretended court was created for the express purpose of depriving Mr. Van Camp of his property. It sat beyond the limits of any well ordered government, so that it was nearly certain that those who contributed to make it an agent for perpetrating a bare-faced spoliation would go unpunished. One of the members of the court, Seaman, was so situated, as to find it to his personal advantage to lend himself to the scheme of Jenkins, as its success enabled him to realize the four thousand dollars under his charter-party to Van Camp, without leaving Apia. The two were so connected with Jenkins as to subject them in a great degree to his influence. And the task imposed on these instruments was rendered a comparatively easy one, by keeping out of view the most material parts of the evidence in existence.

But powerful as were these means at the disposal of Jenkins, it is probable that even they would not have been sufficient to give success to his designs, had it not been that there was a decided hostility to Mr. Van Camp on the part of Mr. Pritchard, the British consul, who had a controlling influence in the neighborhood, and that Mr. Van Camp seems to have been quite unpopular with most of the white persons residing at Apia. It is proper to observe here that, so far as your committee is able to judge of the cause of Mr. Van Camp's unpopularity with the white persons there, from the papers before them, it was not attributable to anything connected with his official conduct, but grew out of differences between him and some of his neighbors as to the lines of their respective properties, and a right of way over land claimed by him. It is also proper to state, in justice to Mr. Van Camp, that the difficulties between him and Mr. Pritchard, the British consul, rose to such a height that Mr. Pritchard brought them, officially, to the notice of Captain Fremantle, of her Britannic Majesty's ship Juno, who was then cruising in those seas, and that Captain Fremantle, after taking the charges of Mr. Pritchard into consideration, decided that with respect to the principal one, Mr. Van Camp

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was right, and that the others were of too frivolous a character to require a decision on them from him.

In whatever light the proceedings of Jenkins may be viewed, they merit unmeasured reprobation. The claims which he attempted to enforce against the property of Mr. Van Camp had no foundation in law or equity. But if it had been otherwise, his conduct with respect to the whole matter, would have been iniquitous in the highest degree. There was no warrant of law for the establishment of a consular court at Apia. Nor is there even the shadow of an excuse for the pretense which he set up beforehand, to palliate his meditated usurpation of power. The act approved August 11, 1848, to which he referred in the communication notifying the Secretary of State of his intention to create such a tribunal, left no room for such a construction as he there pretended to give to it. That act was entitled "An act to carry into effect certain provisions in the treaties between the United States and China, and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," and there is not a provision in the act in relation to the exercise of the powers conferred, which does not, in the most positive manner, negative the idea that any such powers could be exercised elsewhere than in China or Turkey by the agents of the United States.

By the law of nations, the municipal laws and institutions of a state can operate beyond its territorial limits, and within the territory of another state, only by the authority of special compacts between the two states. It is from that source alone that consuls and other commercial agents derive the power to exercise, over their own countrymen, a jurisdiction in the territories where they reside. This jurisdiction, as it is exercised merely for the convenience of trade, is restricted among civilized nations within very narrow limits, and it is only with respect to China and Turkey, that the United States have entered into any treaties providing for the creation of courts, and the exercise of ordinary judicial powers by its own agents, within the territory of another state. In the absence of any treaty, and of any legislation by Congress authorizing it, the creation of a court by any functionary of the government, would be a mere usurpation of power; all the decrees of any court so created, would be absolute nullities, which could give rise to no rights; and if, through the exercise of any jurisdiction thus pretended to be conferred, any person should be deprived of his property, or be aggrieved in his person, all those in any way concerned in the exercise of the usurped power, would be personally responsible for the injuries resulting from that usurpation.

In the present instance, Mr. Jenkins, the commercial agent, who assumed the right to create a court, the members of that court who acted under the commissions issued by him, and the ministerial officers who gave effect to the decrees of that court, were all equally responsible in law to Mr. Van Camp, Mr. Chapin, and all other persons interested in it, for the full value of the property wrongfully seized and disposed of under color of the proceedings already detailed. But while this is true as a legal proposition, it is also true that it is absolutely impossible for those who were thus illegally deprived of their property to obtain any redress for the injury they have sustained

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from the actual perpetrators of the wrong done them. These men are probably without the means of making compensation, and if they were not, as they are all now stationed among the islands of the Pacific ocean, they are certainly beyond the reach of judicial pursuit in our courts. Jenkins, the principal actor in the commission of the outrage perpetrated, returned to the United States and appeared in this city in the latter part of May, 1857. He, it is said, is notoriously without pecuniary means, and, in consequence of this, Mr. Van Camp, one of the memorialists who was then in the city, preferred a criminal charge against him before one of the magistrates of the District, for "feloniously and piratically robbing, stealing, taking, and carrying away the property of him, the said Van Camp, and others for whom he was agent, to the value of seventy thousand dollars, &c.," at Apia, in the Navigators islands. On this charge Jenkins was arrested and committed to prison to await a requisition for his removal to the city of New York, where Jenkins had landed on his return to the United States, and where the offense charged upon him was cognizable. After his commitment to prison, Jenkins applied to the criminal court of the United States for the District of Columbia for a writ of habeas corpus. This writ was granted; and, on the examination of the case, Jenkins was dismissed from custody, without giving time to Mr. Van Camp to procure the attendance of witnesses to substantiate the charge, chiefly, so far as your committee can gather from the papers before them, on the ground that Mr. Appleton, the Assistant Secretary of State, stated, when called on, that he knew nothing about the facts, and that the district attorney of the United States, Mr. Key, informed the court, when applied to in relation to the matter, that "the government declined to take any part in it, and desired that he, Jenkins, should be discharged."

From the situation of the various persons concerned in the perpetration of the wrong, it seems certain that the memorialists are entirely without remedy, unless they can obtain indemnity from the United States for the losses they have sustained through illegal action of a government agent; and the question then presents itself: is the government of the United States bound to indemnify them under the circumstances of this case?

The general rule unquestionably is that a nation is not responsible for the illegal acts of its agents. But to this, like all other rules, there may be exceptions. No matter how just or important any particular rule may be in itself, it cannot properly be applied to cases not embraced within the reasons on which it is founded. The reason of the general rule referred to is sufficiently obvious. In all well-ordered governments, where the laws are supreme, and justice holds the scales and bears the sword, if any public functionary violates the law by usurping powers not conferred on him, or by the abuse of those with which he is actually intrusted, the courts are always open, and it is both the right and duty of every citizen who is aggrieved to call on them to interfere at once. If this duty is performed, the illegal acts attempted to be done are prevented or restrained, or the damages caused by them may be repaired by enforcing the responsibility incurred by all those who were in any way connected with the

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transaction giving rise to them. But if, on the other hand, this duty is not performed; if, when one is within reach of courts competent to prevent or restrain the exercise of usurped authority, he fails to invoke their aid, if the means are at hand to enable them to compel the wrong-doers to make compensation for the injuries they have done, or the damages they have occasioned; then there can be no legitimate claim on the government, either in law or equity, on the part of the sufferer, because the injury done him may be fairly considered as the consequence of his own fault, or the failure to obtain redress from those directly bound to him may be properly imputable to his own negligence.

But it must be otherwise, when the circumstances under which the wrongful acts are done are such that it is impossible to prevent the injury, or to obtain redress for it through the court. In such cases the reason of the rule, "that a nation is not responsible for the illegal acts of its agents," fails altogether, and the rule, in the opinion of your committee, can have no application. It is on that principle that compensation is made for property taken or destroyed in wars by our own forces, under certain circumstances; as, for instance, when the owner is compelled to yield the possession of it to overpowering, though illegal, force, and it was impossible for him to obtain redress for the wrong from the officer ordering, or those who committed it, because *inter arma silent leges.*

There is also another class of cases in which governments are required, by every principle of justice, to make compensation to those who have suffered loss through the negligence or misconduct of its officers. We allude, of course, to those cases where individuals suffer injury because the ordinary duties of government have not been performed by those appointed to discharge them; as, for instance, when property is destroyed in time of peace by a mob composed of unknown persons, or when, through the failure to keep streets and thoroughfares in proper condition, unavoidable accidents occasioning injuries, either to persons or property, are met with. It is not necessary to cite adjudicated cases of the kinds referred to, where corporations of cities have been condemned to make compensation. All are familiar with their existence, and it can hardly be necessary to say that, so far as to the principle involved in such cases, it is as applicable to claims resulting from them against the governments of States as against those merely municipal in their character.

The municipal governments of cities, like the governments of states, are established for the accomplishment of objects essential to the well being of the people within their jurisdiction; and, as all the powers necessary for the attainment of the ends aimed at are vested in them, they are bound to give to their citizens the various benefits and advantages which they were created to secure. If those living under a municipal government so constituted are injured or subjected to losses because the government refuses to exercise the powers conferred on it, or because the agents employed under their authority to carry them into effect either neglect or violate their duty, the government is held to be responsible to those who are aggrieved, on the ground that there has been a breach of the obligation imposed on it in their favor by the mere fact of its creation for the benefit and advantage of all. And

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then we ask, is not this equally true with respect to the governments of states? Is not the same obligation to secure their citizens against violence and wrong, and to extend to them the advantages proposed to be derived from their establishment, necessarily imposed on them also by the mere fact of their creation in the public interest? and do not the same legal and equitable consequences follow from their failure to act at all in discharge of this obligation, or from the neglect or misconduct of the officers to whom they have intrusted the performance of the functions necessary to carry it out? For our own part, we are constrained to say that we can discover no real difference, upon principle, between claims made in cases of the nature referred to, no matter what may be the character of the government under which they arise, and that the only practical difference which exists between them grows out of the fact that the government of a state, being sovereign, cannot be sued, whilst that of a city is amenable to judicial pursuit.

Although the determination of the question involved in the present inquiry does not in any way depend upon the rules of international law, yet it is true that cases frequently arise, in the intercourse of nations with each other, connected with the individual rights of their citizens, which are calculated to throw some light on the point under investigation. If a citizen of one country is injured or subjected to loss whilst in another country by the unauthorized or illegal acts of its officials, it has always been held that the government of the country where the wrong was done is bound to make reparation for it, and that it is the duty of the country to which the person aggrieved belongs to demand it for him. This is the settled practice among civilized nations; and the history of our own negotiations with foreign powers presents various instances in which such claims have been allowed and paid to our own citizens by foreign governments, upon the interposition of our government in their behalf. And why is this? Is it not upon the ground that a government is, in law or equity, bound to make reparation in such cases, and that the obligation is so complete and incontrovertible, upon the principles of the civil or municipal law, as contradistinguished from the law of nations, that it is not only the right of a nation to claim the fulfillment of the obligation in behalf of its citizens, but that it also has the right, by the law of nations, to enforce its fulfillment, in the event of a refusal, even by a resort to war? If this is so; if, by the laws of nations, it is the duty of our government to compel a foreign government to make reparation to our citizens for the injuries done them by the improper or illegal acts of its agents; on what ground, or with what show of justice, can it be pretended that our own government is not bound to make the same reparation when similar injuries are suffered from the improper or illegal acts of our own agents?

From all these various considerations, it seems clear to your committee that the transactions giving rise to the claim before us are in no way embraced in the reason of the general rule, that "nations are not responsible for the illegal acts of their agents," and that they are, in truth, within the reason of those in which it has been uniformly held by our courts that an obligation to repair wrongs suffered or losses incurred by individuals is justly imposed on the public. Indeed, it is not easy to conceive of a case which is more entirely within the recognized principles of law. The transactions on which the claim is

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founded took place beyond the limits of any government competent to protect or vindicate the rights of individuals, and, it may be said, without the pale of civilized society. The only authority which could have been legitimately exercised there over American citizens was vested in the very man who was engaged in the perpetration of the wrongs complained of, and that man's usurpation of power was sustained by an overpowering physical force, which his official position alone enabled him to command. There was no means within reach of the sufferers by which the usurpation of power which caused the injury done could have been prevented, or by which the responsibility incurred by those concerned in depriving them of their property could have been enforced. But this is not all. Your committee are constrained to say, in addition to this, that the executive department of the government seems to have failed altogether to make any efforts for the assistance or relief of our citizens who had been so grievously injured, after the facts in relation to the injury done them had been brought to its knowledge, and that there is good reason to believe that it was chiefly owing to its unwillingness to act that the principal wrong-doer, when there was an attempt made to bring him to justice, upon his venturing within the jurisdiction of our courts, was enabled to escape without a trial, or even a decent judicial investigation.

So far as your committee are informed, there has been nothing in the practice of the government which is at all inconsistent with the views to which we have just given expression, whilst, on the other hand, there has been much in its previous action which seems to indicate a distinct recognition of their correctness. Without attempting an enumeration of the instances of that character, it will be sufficient for our purpose to refer to a single instance in the action of Congress in which such a recognition is necessarily implied. This is furnished by the act (6 Stat. at Large, p. 679) entitled "An act to provide for the settlement of the claim of Mary O'Sullivan," approved July 2, 1836.

In that case the facts were briefly these: A person by the name of O'Sullivan purchased an American brig in one of the South American ports, and took a bill of sale of her, and possession, in pursuance of it, was delivered to him; but as it appeared that the vessel had been registered at Baltimore as owned and commanded by one Furlong, and had been long absent from the United States, O'Sullivan deposited the purchase money on board the United States ship Franklin, and by contract made the payment depend on the future approbation of a commercial house in New York, with which O'Sullivan was connected. Being, however, in possession of the vessel, O'Sullivan caused her to be repaired and refitted, and placing a new commander on board, he directed her to Rio de Janerio, and from thence to Buenos Ayres, to take a cargo of hides to proceed to Cadiz.

Pursuant to these directions, the brig sailed for and arrived at Buenos Ayres. On her arrival there she was seized by the commercial agent of the United States, and the master and supercargo were required to give bond that she should immediately, and by the most direct route, proceed to the United States. These officers resisted the demand of the agent as far as practicable, and endeavored to procure

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such a modification of the bond required as would enable her to proceed on the voyage to Cadiz. These attempts were unavailing. Mr. Forbes remained inflexible; and the vessel was ordered home by the most direct route, and the greater part of the cargo of hides, which had been purchased, was resold. The agent of the United States retained the register and forwarded it, together with his charges against the brig, to the Secretary of the Treasury by another vessel. No proceedings, however, were had upon them on the part of the government, and the brig, after remaining for some time in the port of New York, was libelled for seamen's wages and on a contract of bottomry, and sold. In the meantime, O'Sullivan, the owner of the brig, had proceeded to Cadiz to await her arrival with cargo ordered to be shipped by him, and after having been detained there for some months, in vain awaiting her arrival, he returned to the United States; and it was to make compensation for the losses incurred by him in consequence of the breaking up of the contemplated voyage of his brig, through the action of the commercial agent, that the act for the relief of Mary O'Sullivan, just mentioned, was passed.

It is obvious from the circumstances of this case that it necessarily implies a complete recognition of the views before expressed by us as to the principle which should govern in deciding upon questions of this nature; and that if there be any difference between the two cases, that difference is altogether in favor of the one before us, as the illegal acts complained of by the memorialists were all perpetrated in a distant island where the population are almost in a state of nature, whilst the others all transpired within the limits of a well-ordered government.

In conclusion, then, your committee, in view of the facts now disclosed in this case, have no hesitation in saying that in their opinion the memorialists are entitled to compensation for the losses which they have actually sustained by the illegal acts of Jonathan S. Jenkins, commercial agent of the United States, under color of his office, and of those acting under his pretended authority; and we therefore present the accompanying bill and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 149.

IN THE SENATE OF THE UNITED STATES.

MARCH 21, 1860.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 300.]

The Committee on Naval Affairs, to whom was referred the memorial of Isaac H. Randall, have had the same under consideration, and report:

That petitioner was enlisted or rated an acting master's mate on board the United States ship Vandalia, one of the vessels composing the East India, China seas, and Japan expedition, under Commodore Perry; that upon the arrival of the squadron at Loo Choo, he was detailed by his commander for duty on shore, and subsequently was directed by Commodore Perry to remain at that place, with another acting master's mate, seven of the crews of the vessels of the squadron, a lad as attendant, and one sick man, and provided with provisions for the party for six months, to discharge the duties specified in the following letter and memorandum of appointment and instructions from the commander-in-chief of the squadron:

U. S. STEAM FRIGATE SUSQUEHANNA,
Napa, Loo-Choo, February 2, 1854.

SIR: As Commander Pope selected you to take charge of the depot of the Japan squadron, established at this place, and informed me that you had conducted your charge to his satisfaction, and that you were a person in whom the utmost confidence could be placed, I have determined to continue you in the same responsible employment until the return of the squadron to this port.

Mr. Bierbower, master's mate, a young man highly recommended to me, and seven of the crews of several vessels of the squadron, together with a lad, as attendant, and one sick man, will be left with you, with six months' provisions, and a suitable number of arms and munitions; as also a boat completely equipped, in which you can board vessels arriving at the port, but I have to direct that she be not used for fishing, or for excursions of pleasure or convenience. She is to be kept with oars, sails, &c., always in readiness for important occasions.

I desire that you pursue all possible means of preserving friendly terms with the authorities and people of Loo-Choo, the authorities having assured me that they will do all they can to render you and your party comfortable, by ordering such supplies as you may need,

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and the Rev. Dr. Bettleheim, resident missionary and physician has volunteered to render you all needful medical services; and I particularly enjoin upon the men left with you the most circumspect conduct in their intercourse with the natives.

All violations of the regulations of the service committed by any of these men will be severely punished on my return to the island.

During my absence yourself and Mr. Bierbower will endeavor to arrange a vocabulary of Loo-Choo and English words, and to collect every possible information touching the history, manners, and customs of the people of these islands. You will also make collections, of minerals, shells, plants, and animals, if you have the means of doing so; and, to prevent the exposure of your boat to injury, you are authorized to purchase or hire a canoe such as the fishermen use.

The purser of the flag-ship will advance you any reasonable amount of money for the payment of the contingent expenses of your party, for the proper expenditure of which you will be held accountable.

Again admonishing you of the necessity of extreme prudence and discretion in your intercourse with the authorities and people of the islands, I am, sir, your obedient servant,

M. C. PERRY,
Commander-in-chief of the U. S. Naval Service,
East India, China, and Japan Seas.

Master's Mate ISAAC H. RANDALL,
Napa, Loo-Choo.

Memorandum for Mr. Randall.

UNITED STATES FLAG SHIP SUSQUEHANNA,
Napa Keang, Loo-Choo, February 4, 1854.

The boat to be kept under the shed on rollers ready for launching.

The flag need only only be hoisted when a vessel of war or merchant vessel arrives and sails; not during their whole stay.

Endeavor to induce the men to cultivate a piece of ground, which you can obtain, and particularly, to raise Irish potatoes; they should be planted at once.

The package for California will be put on board the ship expected to arrive here every day with Mr. Moretan.

Do not allow the men to contract any debts.

I send you a variety of American seeds, and you will make every effort to cause their introduction into this island, by carefully cultivating them with the men under your charge.

Also, use every vigilance in collecting seeds, *in their proper season, of every description,* the products of the island, to be sent to the United States.

Mark upon the envelopes the native names, and note the proper season of planting and harvesting.

Note the meteorological observations every *six* hours; an instrument and note books will be left for the purpose.

M. C. PERRY,
Commander-in-chief United States Naval Forces,
East India, China, and Japan Seas.

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That on the 3d day of April, 1855, petitioner received the following appointment and order from Commodore Abbot:

U. S. FLAG-SHIP MACEDONIAN,
Hong Kong, April 3, 1855.

SIR: You are hereby appointed acting master of the United States ship John P. Kennedy, subject to the approval of the honorable Secretary of the Navy.

You will report for duty on board that ship.

I am, very respectfully, your obedient servant,

JOEL ABBOT,
Commanding U. S. East Indian Sqadron.

Acting Master ISAAC H. RANDALL,
U. S. Ship Vandalia, Hong Kong.

And on the 31st October, of the same year, the following:

U. S. FLAG-SHIP MACEDONIAN,
Hong Kong, October 31, 1855.

SIR: In compliance with your request you are hereby detached from the United States ship John P. Kennedy, and will report to Captain William J. McCluney for such duty as he may assign to you in the ship under his command.

Your appointment as acting master, made subject to the approval of the Secretary of the Navy, not being sanctioned by him, is hereby revoked.

Wishing you a safe return to your family and friends, I am, respectfully, your obedient servant,

JOEL ABBOT,
Com'g. U. S. Squadron, East India and China Seas.

Mr. I. H. RANDALL,
Acting Master's Mate, U. S. Navy.

The petitioner claims for the service at Loo Choo during a period of about eight months, the difference of pay between that of the wages of acting master's mate, viz: $25 a month, and the salary of a regularly commissioned naval storekeeper, viz: $1,500 a year. He also claims for the time of the acting mastership under the appointment of Commodore Abbot the difference between his wages as acting master's mate and the salary of a "master in the line of promotion" in the navy, viz: $1,000 a year.

This case, having been referred to the Navy Department for information by your committee, and the following reply received:

NAVY DEPARTMENT, *February* 24, 1860.

SIR: I have the honor to return herewith the petition and papers of Mr. I. H. Randall, which accompanied your letter of the 21st instant, and to state that the department has no knowledge of the facts stated in the petition, except in regard to the appointment of acting master, which the department disapproved, because Mr. Randall was not a

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warrant officer, nor even appointed acting master's mate by the department. There is nothing on its records to show that he was appointed or acted as storekeeper, or gave bonds or rendered any account as such.

I am, respectfully, your obedient servant,

ISAAC TOUCEY.

Hon. S. R. MALLORY,
Chairman Committee on Naval Affairs
United States Senate.

After a careful examination of all the facts, your committee are disposed to recommend the allowance of three dollars a day to petitioner for the time he acted at Loo Choo upon detached duty, deducting therefrom the amount he received during the time as acting master's mate; and for this they report the accompanying bill, with a recommendation for its passage.

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36th CONGRESS, 1st Session. } SENATE. { REP. COM. No. 150.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1860.—Ordered to be printed.

Mr. TOOMBS made the following

REPORT.

[To accompany bill S. 307.]

The select committee to whom was referred the memorial of residents and owners of lands in the parishes of Ascension and Iberville, Louisiana, praying the repeal of the "Act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes;" to whom, also, were referred the protest of the owners of the Houmas grant, have had the same under consideration, and report:

That it appears that on the 5th of October, 1774, one Maurice Conway and Alexander Latil purchased of the Bayou Golau and Houmas Indians a tract of land measuring upwards of half a league in front, on the river Mississippi, about seventy-five miles above the city of New Orleans.

This purchase, it appears, was approved by Unzaga, the governor of Louisiana, to that extent, and *with the common depth of forty arpents.*

The front is bounded on the river, at a common depth of forty arpents in the rear, and the side lines were described by the adjoining tracts.

Afterwards, on the 9th of September, 1776, Maurice Conway petitioned Governor Unzaga for an additional grant in the rear. Omitting the formal parts, that petition sets forth as follows:

"That your petitioner, intending to go and establish himself in the upper part of the country, on the land which he has purchased jointly with Alexander Latil, and, with your permission, from the Houmas Indians, which land is extremely deficient of fences, and is cleared out upwards of a league in depth, so that the cypress swamp being at a distance of about one league and a half from the river, your petitioner has no right thereto, in consequence of your not having granted to him but the common depth of forty arpents, which is so short that he cannot reach the cypress trees necessary for making fences, and other work absolutely necessary on a plantation. Therefore, your petitioner prays you will grant him all the depth which may be vacant immediately after the said depth of forty arpents."

The said Conway further avers that he was the sole proprietor, having purchased the moiety which belonged to Latil, and prays that Unzaga "will direct Louis Andry to put your petitioner in possession

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of the said front and depth, setting the boundaries and giving to your petitioner a certificate of the whole for his information and security."

In pursuance of this petition, Unzaga, on the 27th September, 1776, made his order that "Captain Louis Andry shall go on the land mentioned in the foregoing petition, and shall put the petitioner in the possession of the land which may there be vacant on the back of the forty arpents of depth which he possesses, and running in the same directions, provided the same be vacant and do not injure the neighbors, to the effect of which *he shall set and mark the boundaries, and shall extend after this decree a* PROCES VERBAL *of his operations*, which, signed by him and the said neighbors, shall be forwarded to me, that I may cause the complete title to issue."

It further appears that, on the 9th day of October, 1776, Captain Andry made the survey, and certified that he went on the land alluded to, accompanied by Conway and the commandant of the district, Louis Judice, and after having called on the Indian chief to designate the boundaries of his sale, his *procés verbal* then proceeds as follows: "And immediately after I have measured the space between those boundaries, drawing to that effect in the woods the lines necessary to ascertain its extent, [which lines are marked on the plan, a sketch of my operations which I have delivered to said petitioner,] and found that it contains ninety-six arpents in front on the river, growing wider one hundred and twenty degrees in depth, on account of its being situated on the bend of the river, the upper line common with Francis Duhan, running north fifty degrees to the west, and the lower one common with Michel Chiasson, running north seventy degrees to the east.

"The measurement of said front being thus made, I proceeded to put the petitioner in the possession of the depth granted to him by the foregoing decree, to the effect of which I went back to the upper line common with Francis Duhan, in whose presence I found out the boundaries set by me on the 22d of December, 1773, and which still exist in the same situation, distance, and direction, both of mulberry wood—the first * * * at the distance of thirty-seven toises, and two feet from the actual bank of the river, and the second * * * at one arpent or thirty toises more in the back. Afterwards I continued in the same line, and in the aforesaid direction, of north fifty degrees west to the depth of forty arpents, opening to that effect a small road through the woods, at which place I caused to be driven two feet and a half in the earth a boundary of cypress wood * * * at the further distance of two arpents—that is, at forty-two arpents from the river—another boundary similar in all its circumstances to the one just spoken of. This line being thus drawn, I went to the lower one common with Michel Chiasson, whom I also called, and after measuring the seven arpents which, by the decree of the 27th of September last, the governor aforesaid granted to him, I caused two boundaries of mulberry wood to be driven in the said line, the first * * at the distance of twenty toises more in the depth. After that I continued the said line through the wood in the same direction of north seventy degrees east to the depth of forty arpents, at which point I caused to be driven two and a half feet in the earth a boundary of cypress, * * * and at

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the further distance of two other arpents—that is, at the distance of forty-two arpents—from the river, I caused another boundary of the same size, and similar in all its circumstances to the foregoing, to be driven into the earth in order that the direction may not deviate.

And in order that all the above may appear, I give the present certificate, which I have signed, with the said petition of Maurice Conway, and the said commandant and interpreter of this transaction, Louis Judice, the said Indian chief named Calabe, and the two adjoining neighbors, Francis Duhan and Michel Chiasson, having declared not to know how to sign. All which I do attest at the aforesaid coast or district the day and year above written."

The procés verbal is accordingly signed by Andry, Conway, and Judice.

On the 21st June, 1777, Galvez, the then governor of Louisiana, made the grant, which is in the following terms:

"Bernardo de Galvez, colonel of the battalion of infantry of Louisiana, governor, intendant, and inspector general thereof, having seen the foregoing proceedings of the second adjutant of this place, the Captain Lewis Andry, concerning the possession which he has given to Maurice Conway by virtue of the foregoing decree, issued by my predecessor, of all the vacant land, behind or in the rear of the forty first arpents, which he possesses, by ninety-six arpents in front, on the river, running in the same direction as these; and whereas the same is conformable to the rules made touching surveying of land and adjoining neighbors, so that no injury is done to said neighbors, who, so far from having made any opposition, have consented to said operations, of which I do hereby approve, and, using the faculty that the king has given me, I grant, in his royal name, to the said Maurice Conway the said land behind or in the rear of the forty arpents which are contained in his plantation, situated in the district of La Fouche, by ninety-six in the front in the river, following the same direction as those, in order that, as his own property, he may dispose or enjoy the same conformably to the said operations, and complying with the conditions prescribed in the ordinances made on the subject of lands."

It does not appear that any of these original papers referred to are in existence, or were ever recorded, but assuming them to be genuine, they constitute the whole of the title of the claimant under the Houmas grant under the Spanish grant.

It does not appear that the fact of the grant has ever been contested by this government. The whole question has been as to its extent.

The first account we have of this claim under this government was an application made by the claimant, about the year 1804, to Governor Claiborne, of Louisiana, to have the same surveyed, and in pursuance of an order from him, one Bartholomew Lafon was appointed to survey the same.

Lafon's survey ran out the northwest line to Bayou Manchac, and the northeastern line to Lake Maurepas, including all the lands included in these boundaries out to the Mauchac and Amite rivers, which was there the boundary on the east of the possessions of the Spanish crown.

This survey, with the perfect Spanish grant, upon which it was reputed

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to be founded, was laid before the board of commissioners, organized under the act of the 2d March, 1805, for the purpose of ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana. It had then been parceled into three distinct tracts, one held by Donaldson and Scott, and the another by Daniel Clarke, and the third by William Conway, all claiming title by purchase or succession from Maurice Conway.

The two commissioners who composed the board at the time the claims and the evidence to support them were presented, decided that "the claimants had fully established their right, that their title was a genuine and complete Spanish grant, and that it included all the land claimed by them and included in Lafon's survey. These decisions appear under the numbers 125, 127, and 133, in the transcript of their decisions laid before Congress, by the Secretary of the Treasury, on the 8th day of January, 1812. Thomas B. Robertson, who became a member of the board subsequently to its action on these claims, entered a formal dissent from these decisions. According to the laws establishing this commission, these decisions of the commissioners were to be reported to Congress for its final action and decision thereon.

That the claimants under the Houmas grant were entitled to ninety-six arpents front on the Mississippi river, and the *common* depth of forty arpents rear, seems to have been conceded by all of the agents and officers of the government, and that they were entitled to a back concession to *some* extent, seems also to have been generally admitted. The whole controversy rests upon the extent of the back concession. No officer or agent of the government, except two of the commissioners, appointed under the act of 1805, ever acknowledged the grant to the extent claimed. We may except also Judge Bibb, who, when Secretary of the Treasury, held, that under the act of 1814, Congress had confirmed it to the whole extent claimed. This decision of Governor Bibb was subsequently reversed by the circuit court of the United States, and from which decision the claimants under the Houmas grant have not appealed.

With these exceptions, the whole action of the government, from the day of the treaty of 1803 up to the act of the 2d June, 1858, now under consideration, has been against the claim to the extent urged by the persons claiming under this grant.

The grant of the 21st June, 1777, from Governor Galvez to Maurice Conway, contains the whole claim to the premises in dispute. It never was petitioned for, surveyed, or granted, otherwise than hereinbefore stated. It was a complete grant to all it conveyed, and the sole question in controversy, admitting the grant to be genuine, is, how much it embraced. To that extent, the government of the United States is bound, both by the law of nations, and the treaty of 1803, by which we acquired the title of France to Louisiana. It required no further acknowledgment, no act of Congress, no confirmation of commissioners to the perfection of the right of those who claimed under it. The government of the United States covenanted, so far as concerns this controversy, to do nothing except to preserve the rights of property of those persons who owned property in Louisiana. The government of

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the United States performed all of its treaty stipulations with France with fidelity and honor. It not only respected perfect rights of property, but, with a wise liberality, it undertook to carry out with reference to the people of the ceded province, all of the undertakings, perfect or imperfect, of both the governments of France and Spain, the former proprietors of Louisiana.

The act of 1805 *required* all persons claiming under incomplete titles, and *permitted* all persons having *complete* titles, to present them within a limited time to commissioners appointed under that act, whose duty it was to examine them, and report their decisions thereon to Congress. Their decisions were not final; they were subject to the determination of Congress thereon.

The act of 1806 still further aided honest claimants under the French and Spanish governments.

The act of 1807 vested in the commissioners the power finally to determine upon all cases which involved no more than the quantity of land contained in one league square; and the act of 1814 authorized the issuance of patents to all persons coming within the act of 1807.

The claimants under the Houmas grant come within none of these acts of Congress. It has been before remarked that they sought to bring themselves under this act of 1814. This pretension, after having been allowed by Governor Bibb, was condemned by the circuit court of the United States. Efforts were made at different times to get a recognition of this grant to the extent claimed by its owners, both from Congress and the different departments of the government, from 1805 to 1858; but all these efforts failed. A very full and accurate history of these efforts, and of this claim generally, is to be found in an opinion of Mr. Justice Clifford, now of the Supreme Court, then Attorney General of the United States, given to the President, in pursuance of a resolution of Congress passed the 26th of June, 1846, to which your committee beg leave to refer the Senate, in order to avoid its repetition here.

The difficulty, as before observed, in this grant is this: the back line of the survey never was closed. The surveyor ran but two arpents back of the first forty arpents "to keep the course." How far the two lines from the river were to run was not specified. The petitioner wanted a timber privilege for less than 4,000 acres of land; represented that he had no timber for fences, and other necessary plantation purposes; said that the cypress was one and a half leagues back of the river, and it seems asked a concession of *all the back lands* to get timber for his farm.

Under the term, "all the back lands," the Houmas claimants, *after* the treaty of cession, and *never* before, claimed and surveyed above 180,000 acres of land for a timber privilege for less than 4,000 acres. This timber was scattered over more than 300 square miles, in a country not naturally well adapted to easy transportation.

This pretension was very naturally considered exhorbitant and unreasonable, and nothing but the clearest words of grant, unrestrained by the facts and circumstances of the case, could be deemed sufficient to maintain it. Therefore the officers of the government and Congress uniformly, with the exception before stated, refused to recognize it.

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The claimants under the Houmas grant have been in possession of the river front from 1777 to this time, and the extent of this possession to the rear does not appear to the committee; but, in 1776, the King of Spain imported from the Canary Islands a company of poor immigrants, and settled them on the Iberville and Amite rivers, twenty or thirty miles from the river Mississippi, granted them lands, and established the town of Galveston, all within the limits of said grant as now claimed.

Some grants upon the Mississippi river were made before this, and with which this Houmas grant conflicts, and others were made after this grant, within the limits as now claimed, without objection or complaint from these grantees, as far as your committee have been able to ascertain.

Other persons, squatters, without legal rights, have also, from time to time, settled on these back lands, relying upon the uniform policy of the government to grant them preëmption, if the land should prove to belong to the government and not to the claimants. All these settlers in the aggregate, according to the memorial before your committee, amount to about five hundred families. Some of these occupants have located on their premises in pursuance of Spanish or French grants older than the Houmas grant, others under grants younger than that grant, and others still relying solely upon the goodness of the title of this government; and it is a strong fact in this case that, from 1803 to this hour, as far as your committee have been able to learn, no effort has been made to eject any of these persons by the Houmas grantees.

We have already shown that the title of the grantees was perfect to every extent that they had title at all—just as perfect without as with congressional action, *if it were a good title*—yet they seem never to have ventured to assert it in the courts, even against a squatter.

Your committee do not deem it necessary to give any opinion as to the validity of the Houmas grant, or its extent, further than to say, that it is not, in their judgment, such a title as Congress ought to affirm, to the prejudice of the other parties at interest, without a judicial affirmance of it.

The act of the 2d June, 1859, gives a great and unjust advantage to the claimants, for which your committee see no sound reason, either in justice or sound policy. It gives the Houmas grantees paramount title to the lands in dispute, and requires all adverse claimants to make good their titles by suits at law; and if they fail, for any reason whatever, to show a perfect title in themselves, their lands all fall to the Houmas grantees. This is manifestly unjust to such adverse claimants, and may inflict the most cruel wrongs upon them. But this bill is also unjust to the public. If the Houmas grantees have no good title to this vast body of lands, it is against sound principle and sound policy to give it to them. By the third section of said act, if any of these grantees within the lines of the Houmas grant should be able to maintain their titles, this section allows the Houmas grantees to float on the public lands for such deficiency. Therefore, if any portion of their grant shall be defeated, even by a better and superior title, though it may be derived from Spain or France, this act makes up the

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loss to the claimants under the Houmas grant from the public domain. This legislation, also, we think unsound and untenable. Your committee therefore recommend that the second section of the act of 2d June, 1858, and also so much of the third section as refers to the second, be repealed, and that the title of the claimants under the Houmas grant be judicially settled; and for which purposes they herewith report a bill.

APPENDIX.

MARCH 26, 1860.—*Ordered*, That the opinion of the Attorney General, dated December 31, 1847, made in compliance with "A joint resolution in relation to the issuing of grants of certain lands in Louisiana," approved June 26, 1846, and the statement of Louis Janin, counsel for certain claimants under the Houmas land grant, be printed as an appendix to the report (No. 150) of the Select Committee.

REPORT OF THE ATTORNEY GENERAL.

ATTORNEY GENERAL'S OFFICE,
December 31, 1847.

SIR: In compliance with the joint resolution of Congress, approved 26th June, 1846, entitled "A resolution in relation to the issuing of grants of certain lands in Louisiana," I have examined the questions submitted to me in the case to which it refers, and have now the honor to report the result of that examination, and my opinion thereon, for your consideration.

The purpose which Congress had in view in instituting this examination, is very fully and explicitly disclosed in the resolution. It provides "that the Attorney General of the United States be, and he is hereby, directed to examine the evidences of title in the case of a certain Spanish land claim in the State of Louisiana, lying on the Mississippi, above New Orleans, commonly known as the Houmas claim, and to report his opinion thereon to the President of the United States; and, if in the opinion of the Attorney General any patent or patents issued, or which may be issued under such claim, shall have been, or shall be issued, contrary to law, that the President of the United States be, and he is hereby, requested to cause proceedings to be instituted in behalf of the United States, and to have the validity of such patent or patents judicially determined."

Two points of inquiry are obviously presented in the resolution, neither of which can be satisfactorily answered without an accurate knowledge of the facts. The *first* clause relates to the title of the claimants to the land referred to in the resolution, and requires an opinion as to the evidences in support of it; which presents a distinct issue involving the validity of the whole claim. The *second* refers to the patents which have been issued on the claim; and, by necessary implication, to the circumstances under which those evidences of title are executed, and clearly puts in issue the authority assumed in granting them.

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The evidences of title to be examined are not specified, nor is there any designation of the source from which they should be derived, other than what may be inferred from the description of the claim to which they relate.

Under these circumstances, and with a view to obtain all the documents relating to the claim, I addressed a communication to the Commissioner of the General Land Office on the 20th of December, 1846, calling his attention to the resolution, and requesting him to furnish me with any information in his office upon the subject, and received with his reply what I suppose to be a full compliance with my request. In the meanwhile, other official engagements had intervened, admitting of no delay, and rendering it impracticable to complete the examination, at that time, in a manner which its importance seemed to demand, and it was accordingly postponed. Having since resumed the subject, and examined all the papers relating to the title in my possession, and fully considered the several arguments filed in the case, I will proceed to state the result of my investigations, and the conclusions which I have formed upon the respective inquiries embraced in the resolution.

It was my first object, after resuming the subject, to ascertain the origin of the title. There can be no doubt, I think, that a part of the tract of land in dispute was once possessed, and perhaps owned, by the Bayou Goula and Houmas Indians, who derived their right to the same under the authorities of the province of Louisiana, while it was subject to the dominion of France. The precise character of their interest, or the extent and boundaries of their possessions, do not very satisfactorily appear. The first title paper produced in support of the present claim appears to have been executed during the period of the Spanish rule over the province, about twenty-nine years before its formal surrender and delivery by France to the United States. It purports to be a copy of a conveyance from the chief of those two tribes to one Maurice Conway and Alexander Latil, and bears date at New Orleans, the 5th October, 1774, wherein the said chief, in consideration of the sum of one hundred and fifty dollars paid to him in goods, cedes to them "a tract of land measuring upwards of half a league, at the distance of twenty-two leagues from this city, on this side of the river, joining on the upper side lands belonging to John the blacksmith; and on the lower side, the place where are erected the huts in which the said two nations of Indians now live; but when the said huts will be taken away, to be transported on the other side of the river, the true boundary on the lower side will be the lands belonging to an old Acadian, named Peter; so by the measurement which the said purchasers will make of the said tract of land according to the said boundaries, its exact contents will be ascertained." This purchase, it appears, was approved by Unzaga, the then governor of Louisiana, by his order or decree, bearing even date with the conveyance, in which he also granted the lands to the purchasers, and directed them to apply to him in order that, in virtue of the sale and approbation, he might cause a complete title to be issued to them.

There is no evidence that a formal application in writing was ever made for a complete title, except what may be inferred from the recitals

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of the grant, which appears to have been regularly executed by Unzaga, on the 1st of November, 1774, and is as follows: "In consequence of the above certified copy and approbation of the sale that the chief named Calazare made, both in his name and in that of the Bayou Goula and Houmas Indian nations under his command, to Maurice Conway and Alexander Latil, of this city, of a tract of land which was granted to them by the ancient French governor, measuring upwards of half a league in front, on the river Mississippi, on the coast of Cabahanoce, in the district of Mr. Judice, joining on the upper side the plantation belonging to the blacksmith, and on the lower side that of an old Acadian, named Peter, and there being no opposition made on part of these two neighbors, and no injury being made to their respective boundary lines, using of the faculty that the king has given me, I grant, in his royal name, to the said Maurice Conway and Alexander Latil, the above-mentioned tract of land, which measures upwards of half a league in front on the aforesaid coast, with the common depth of forty arpents, joining on the upper side the plantation belonging to John the blacksmith, and on the lower side that of the old Acadian, named Peter, that, as their own property, they may dispose of or enjoy the same, conformably to the said sale and conditions imposed by the regulations concerning lands."

The extracts above given have not been compared with the original papers, there being none such in my possession in relation to this part of the case. Finding them, however, in translations furnished by the claimants, which were published by the order of the Senate, and perceiving no reason to question their accuracy, I have adopted them in tracing this branch of the title. They will be found in *Senate document No.* 144, *second session Twenty-fifth Congress*, appended to the memorial of the heirs of Wade Hampton, which was presented to Congress in 1837.

Whatever practical difficulties might have arisen at that time in an attempt to ascertain the side lines above-mentioned, growing out of the uncertainty that probably existed in regard to the precise boundaries of the adjoining locations, it must be admitted, I think, that the land is too explicitly described on the face of the grant to be matter of controversy. The front is bounded on the river; it has a common depth of forty arpents, which could readily be ascertained by a survey, and the side lines are described by the adjoining tracts; the practical uncertainty in regard to which, it may be presumed, constituted one of the causes which led to the petition of Conway to Unzaga, hereinafter mentioned.

Pursuing the inquiry in the order of events, we come now to the grant, which is the principal subject of dispute. On this point we have, in the first place, what purports to be the original title paper, in the form and language in which it was first executed by the Spanish authorities in Louisiana. It having been furnished by the Land Office, and appearing to be genuine, I know of no reason to question its authenticity, and therefore assume that the claimants are entitled to the full benefits of its provisions, so far as their rights under it are defined and can be ascertained.

It contains the original petition of Conway addressed to Unzaga,

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and his order of survey thereon; the *procés verbal* by Captain Louis Andry of the survey made by him under the order; and the grant made by Galvez, the successor of Unzaga.

By a reference to the translation of these documents, furnished by the claimants, it will appear that the petition was made to Unzaga by Maurice Conway, and bears date the 9th September, 1776. Omitting the formal part, it sets forth as follows: "That your petitioner intending to go and establish himself in the upper part of the country, on the land which he has purchased jointly with Alexander Latil, and, with your permission, from the Houmas Indians, which land is entirely deficient of fences, and is cleared out upwards of a league in the depth, so that the cypress swamp being at the distance of about one league and a half from the river, your petitioner has no right thereto in consequence of your not having granted to him but the common depth of forty arpents, which is so short that he cannot reach the cypress trees necessary for making fences, and other work absolutely indispensible on a plantation, therefore your petitioner prays you will grant him all the depth which may be vacant immediately after the said depth of forty arpents." The petitioner further states that he is the sole proprietor, having purchased the moiety which belonged to Latil, and prays that Unzaga "will direct Louis Andry to come and put your petitioner in possession of the said front and depth, setting the boundaries, and giving to your petitioner a certificate of the whole for his information and surety."

Upon this petition the governor, on the 27th September, 1776, made his order or decree, in which he directs that "Captain Louis Andry shall go on the land mentioned in the foregoing petition, and shall put the petitioner in possession of the land which may there be vacant on the back of the forty arpents of depth which he possesses, and running in the same directions; provided the same be vacant and do not injure the neighbors, to the effect of which he shall set and mark the boundaries, and shall extend after this decree a *procés verbal* of his operations, which, signed by him and the said neighbors, shall be forwarded to me, that I may cause the complete title to issue."

On the 9th October, 1776, Captain Andry made the survey, and certified that he went on the land alluded to, accompanied by Conway and the commandant of the district, Louis Judice, who, understanding the language of the Indians, he requested to call their chief, that he he might show the upper and lower boundaries; that the said Judice having complied with the request, the said chief came, and answered by means of the said interpreter and commandant: "that the said land sold by him extended and was previously occupied by the said Indians from the lower boundary of Francis Duhan, on the upper side, to the boundary of Michel Chiasson, on the lower one; which names do not now agree with those mentioned in the instrument of sale in consequence of said lands having passed into the hands of several owners since the said period." The *procés verbal* then proceeds as follows: "And, immediately after, I have measured the space between those boundaries, drawing to that effect in the woods the lines necessary to ascertain its extent, (which lines are marked on the plan or sketch of my operations, which I have delivered to the said petitioner,) and found

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that it contains ninety-six arpents in front on the river, growing wider one hundred and twenty degrees in the depth, on account of its being situated on the bend of the river, the upper line, common with Francis Duhan, running north fifty degrees to the west, and the lower one, common with Michel Chiasson, running north seventy degrees to the east. The measurement of the said front being thus made, I proceeded to put the petitioner in the possession of the depth granted to him by the foregoing decree: to the effect of which I went back to the upper line, common with Francis Duhan, in whose presence I found out the boundaries set by me on the 22d December, 1773, and which still exist in the same situation, distance, and direction, both of mulberry wood —the first *** at the distance of thirty-seven toises or fathoms and two feet from the actual bank of the river, and the second *** at one arpent or thirty toises more in the back; afterwards, I *continued* in the same line and in the aforesaid direction of north fifty degrees west, to the depth of forty arpents, opening to that effect a small road through the woods, at which place I caused to be driven two feet and a half into the earth a boundary of cypress wood ***; and at the further distance of two arpents, that is, at forty-two arpents from the river, I set another boundary, similar in all its circumstances to the one just spoken of. This line being thus drawn, I went to the lower one, common with Michael Chiassson, whom I also called, and, after measuring the seven arpents which, by decree of the 27th September last, the governor aforesaid granted to him, I caused two boundaries of mulberry wood to be driven in the said line, the first * * at the distance of twenty toises from the actual bank of the river, and the second * * at the distance of twenty toises more in the depth; after that I *continued* the said line through the wood, in the same direction of north seventy degrees east, to the depth of forty arpents, at which point I caused to be driven two and a half feet into the earth a boundary of cypress wood ***; and at the further distance of two other arpents, that is, at the distance of forty-two arpents from the river, I caused another boundary, of the same size and similar in all its circumstances to the foregoing, to be driven into the earth, in order that the direction may not deviate. And, in order that all the above may appear, I give the present certificate, which I have signed, with the said petitioner, Maurice Conway, and the said commandant and interpreter in this transaction, Louis Judice, the said Indian chief, named Calabe, and the two adjoining neighbors, Francis Duhan and Michel Chiasson, having declared not to know how to sign: all which I do attest, at the aforesaid coast or district, the day and year above written." The *procés verbal* is accordingly signed by Andry, Conway, and Judice.

It is much to be regretted that the figurative plan or sketch referred to by Andry, and which he delivered to Conway, had not been preserved, or, if still in existence, that it had not been produced as a part of the evidence in the case. In the absence of that paper, it will become necessary to examine the *procés verbal*, or official certificate of survey, with more care; it being the only mode of ascertaining the lines actually run on the occasion, and the monuments set in the field in pursuance of the decree of Unzaga, and the essential foundation of all the initiatory proceedings upon which the grant is based. Of necessity

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there must be some guide to ascertain the boundaries of the tract, or the whole proceeding would be void for uncertainty. There is not, at present, in the case any other evidence than this certificate, upon which we can rely for this information.

On the 21st June, 1777, Galvez, the then governor of Louisiana, made the grant, which is in the following terms:

"Bernardo de Galvez, colonel of the battalion of infantry of Louisiana, governor, intendent, and inspector general *pro tempore* thereof, having seen the foregoing proceedings of the second adjutant of this place, the Captain Louis Andry, concerning the possession which he has given to Maurice Conway, by virtue of the foregoing decree, issued by my predecessor, of all the vacant land behind or in the rear of the forty first arpents which he possesses, by ninety-six arpents in front of the river, running in the same direction as these; and whereas, the same is conformable to the rules made touching surveying of lands and adjoining neighbors, so that no injury is done to said neighbors, who, far from having made any opposition, have consented to the said operations, of which I do hereby approve; and using the faculty that the king has given me, I grant, in his royal name, to the said Maurice Conway, the said land behind or in the rear of the forty arpents which are contained in his plantation, situated in the district of Lafourche, by ninety-six in front on the river, following the same direction as those, in order that, as his own property, he may dispose or enjoy the same conformably to the said operations, and complying with the conditions prescribed in the ordinances made on the subject of lands."

Another translation of the petition, order of survey, *procés verbal* of the survey, and the grant, is to be found in Clarke's Land Laws, page 954, substantially the same as that furnished by the claimants.

The survey upon which the grant was made bears date the 9th October, 1776; and, in tracing this title, I have omitted any reference to a small tract of six by forty arpents, situate on the upper side of the Houmas claim, which Conway purchased of Landry on the 18th of October, 1776. The purchase having been made nine days after the survey of Andry, and of course subsequent to all the initiatory proceedings upon which the grant to Conway was made, it can in no way affect any conclusion that may be formed upon the terms of this grant; nor does it appear to be embraced in the range of this investigation.

Having thus shown the origin of this claim, it is only necessary here to remark that, under the grant, the claimants insist they are entitled to a tract of country on the left bank of the Mississippi river, with a front of a league and one seventh, and with a depth extending to the rivers Amite and Iberville, and Lake Maurepas, the side lines diverging from the front north fifty degrees west, on the upper side, and north seventy degrees east, on the lower side, to the rear boundary aforesaid, and including by estimate more than one hundred and eighty thousand acres.—(See plat annexed, marked A.)

The United States acquired the territory, at that time known as the province of Louisiana, by the treaty concluded at Paris the 30th April, 1803, and it was formally delivered to the United States on the 20th December, of the same year. By that treaty it was stipulated that the inhabitants should be incorporated into the Union, and admitted as

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soon as possible to the rights of citizenship, and that "in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Subsequent to the treaty, and in anticipation of the delivery of the territory, Congress passed the act of the 31st October, 1803, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States," by the treaty aforesaid, "and for the temporary government thereof." (2 Statutes at Large, 245.)

The *second* section provides "that, until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil, and judicial powers exercised by the officers of the existing government of the same shall be vested in such person and persons, and *shall be exercised in such manner as the President of the United States shall direct*, for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion." William C. C. Claiborne, of Mississippi, was duly appointed governor of Louisiana on the same day the act passed.

Shortly after the surrender of the province, and the appointment of Mr. Claiborne as governor, William Donaldson, in behalf of himself, William Marrener, and Patrick Conway, describing themselves as owners of a tract of land called the Houmas, presented their petition to Governor Claiborne, stating the grant of the tract to Maurice Conway, and that, "being desirous of ascertaining the outlines and boundaries of the said land, with such precision as to avoid any interference with the proprietors of the neighboring grants, and thereby prevent expensive disputes, humbly prays that your excellency will be pleased to permit the said William Marrener, or such other person as may be appointed for that purpose, to survey the said tract of land, and mark the boundaries thereof; and at the same time the directions may be given to the proprietors of the adjoining patents to show their boundaries to the said surveyor, that he may avoid any interference therewith, and to the commandant of the district to protect him from all illegal disturbances in the prosecution of said work."

Upon this petition Governor Claiborne made the subjoined order: "The proprietors of land adjoining the tract within mentioned are requested to show their respective boundaries, and the commandant of the district, if necessary, will extend to the surveyor his protection."

The petition and order are without dates, in the form in which I find them, in *Senate document No. 45, second session, Twenty-eighth Congress, p. 20.* This is the first account we have of the claim under this government.

It was subsequently laid before the commissioners appointed under the act of 3d March, 1805, when it was claimed in three several parcels —the upper tract by William Donaldson and John W. Scott, the middle by Daniel Clarke, and the lower by William Conway.

In order to present a full view of this case, it now becomes necessary to examine certain surveys and ancient conveyances which were laid before the commissioners, and have since been relied on as supporting the views of the claimants in regard to the extent of the grant.

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1st. *The Donaldson and Scott tract.*—On the 28th December, 1804, a certain Bartholomew Lafon, alleging himself to be a surveyor commissioned by Governor Claiborne, certified a plat and certificate of survey of this tract, conformably, as he says, to a survey made by William Marrener on the 27th June, 4th August, and 3d December, 1804, and to measurements executed by himself on the Iberville, which he describes in the plat as the northern boundary, carrying back the depth to that river, making the length of the upper line four hundred and sixty arpents and fifteen toises, and the lower line three hundred and eighty arpents. The copy of this certificate will be found in the proceedings before said board, as printed in *Senate Doc. No.* 45, *p.* 17. *See also plat B, hereunto annexed.*

The first title papers laid before the commissioners in reference to this tract consist of certain proceedings relating to a judicial sale in the matter of the estate of Colonel Gilbert Anthony St. Maxent, of which a certified copy in Spanish is among the papers, and a printed translation is annexed to the aforesaid memorial of the heirs of Wade Hampton, p. 24. There is recited in the proceedings what purports to be a clause of the will of St. Maxent, which is given in the following words: "I declare for the effects which may be proper to have among my property, a plantation in the place called Houmas, at about eighteen leagues from this city, which I purchased for the price of six thousand dollars from Maurice Conway, about seven years ago, by act passed in one of the notaries' offices of this city aforesaid, measuring eighteen arpents in front, by upwards of four leagues in depth." The conveyance referred to by Maurice Conway to St. Maxent is not given.

The extract from the will of St. Maxent is followed by an authenticated copy of the petition of Peter de Marigny, with the order thereon, which, according to the certificate, appears in folio 276 of the proceedings. It is not shown to whom the petition was addressed; but it sets forth that no more than fifteen hundred dollars had been bid for the plantation, and that he thinks it will be proper to suspend the adjudication thereof until the month of November then next. It further states that, by the clause of the will of St. Maxent before quoted, the said plantation measured eighteen arpents front, by upwards of four leagues in depth; that it had been appraised at the sum of four thousand five hundred dollars; whereas the sum which had been bid for it was but the half of the two thirds at which it was appraised; and that perhaps the inhabitants, "being ignorant of the depth belonging to the said plantation, have not made the biddings according to the value which that depth must give it." He therefore prays that an order issue to Cantrelle, the commandant of the post, containing this representation and the decree thereon, and directing him to have the plantation cried for sale until August next; to send circulars to the neighboring posts to receive the biddings of the bidders respectively; and, informing every one of the depth, to cause the same to be adjudged in whole or in parts; which biddings, in the month of August, he should forward to the proper tribunal, that the adjudication might be made conformably thereto, on the terms of credit to be granted, and on the securities to be required from the purchasers. The decree thereon was: "Let it be done as prayed for."

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On folio 378, which, let it be observed, is subsequent to the foregoing petition, there is the following entry: "And, as for the lands of the Houmas, let the order prayed for be issued, inserting therein the contents of the foregoing writing; and let appraisers be appointed who, after they have accepted of their appointment, and promised under oath to discharge well and faithfully the duties incumbent on them, shall proceed to appraise said lands, which shall be sold for cash in case more than two thirds of their appraisement value shall be bid for them, and the proceeds of the sale shall be forwarded by the first secure opportunity.

"JOHN VENTURA MORALES,
"LICENTIATE MANUEL SERRANO."

Morales was intendant of the royal revenue, and this decree seems to have been addressed to Evan Jones, the then commandant of the parish of Lafourche.

On the 1st of August, 1798, Jones received the order on his way to the city of New Orleans, and, in a communication to the intendant, states that there are two persons in the city sufficiently acquainted with the quality and circumstances of the land; therefore, the intendant could order, if he thought proper, that they appraise the same.—(See Hampton's memorial, p. 25.)

On the 3d of August, 1798, in consequence of the above, the intendant directed the lands to be appraised by Simon Ducorneau and Alexo Lesassier. The said Ducorneau and Lesassier accordingly appraised the land before a notary, describing it at about twenty-four leagues from the city, and "that, considering that the said lands measure about twenty-nine arpents in front by upwards of four leagues in depth, they do appraise the same, after consultation and agreement between them, at the sum of twenty-four hundred dollars, the said land being now uninhabited, without any buildings or improvements whatsoever thereon; which price they appraise it at, as the one which they consider it is worth, and no more."

Thereupon, the following decree was made: "The present notary shall call on the printer, and showing him the foregoing appraisement, he will cause him to publish in his Gazette a notice informing the public that the sale of said lands shall take place on the 13th instant, at four o'clock in the afternoon, at this intendant's house.

"MORALES."

The notary accordingly caused the following notice to be published in the Gazette of the 9th August, 1798:

"For sale: A land, of twenty-nine arpents in front by about four leagues in depth, situated at twenty-four leagues from New Orleans," &c.

On folio 382, under date of the 6th of August, 1798, there appears the following decree: "Whereas the foregoing decree is to be executed only in case Evan Jones, commandant of Lafourche, should not have been able to sell said lands, let an order, directed to him, issue, containing the appraisement and this decree, directing him to proceed to the said sale, for cash, provided the price bidden for it be upwards of

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the two thirds of the appraised value, there being no higher bidder, to pay the sum due for the making of the levee, causing the receipt thereof to be annexed to the proceedings, which, together with the balance of the proceeds of said sale, shall be forwarded to this tribunal, and to give due notice before the thirteenth instant, conformably to what has been already decreed on this subject.

"JOHN VENTURA MORALES,
"LICENTIATE SERRANO."

It appears, however, that Commandant Jones had sold the land on the 12th of August, 1798; and it is worthy of special notice that, in his final act of sale, or title paper to the purchaser, to complete his action, and the one upon which all the rights acquired by the purchaser depend, he describes the land sold by him "as measuring twenty-nine arpents in front *by the depth which could be found.*"—(Sen. Doc. No. 45, p. 17. See, also, translation annexed to Hampton's memorial, p. 26.)

Louis Faure having bid $1,650, more than two thirds of the appraised value, and no person outbidding him, the said commandant adjudged the said lands to Faure and his heirs forever, and signed the act of sale.

The next title paper produced before the board of commissioners is a conveyance by Faure to John W. Scott, dated 2d June, 1803. (See Spanish copy, Senate Doc. No. 45, p. 18.) This describes the land as "a front of twenty-nine arpents upon all the depth which can be found."

An agreement, under date 3d November, 1803, between John W. Scott and William Donaldson, was also produced, as per Spanish copy, p. 19, which describes the land with "a front of twenty-nine arpents, with all the depth which can be found."

2d. *The Daniel Clarke tract.*—The said Lafon, on the 25th September, 1805, alleging himself to be a surveyor commissioned by Governor Claiborne as aforesaid, certified a plat and certificate of survey of this tract, conformably, as he says, to a survey made by Marrener, and to measurements which he, Lafon, had executed in November, 1804, upon the river Amite and environs of Galveston, which plat was composed of two parcels of land, one acquired from Marrener and the other from William Conway, in which he represents the river Amite and Iberville as the northern boundary of the tract, giving the length of the lower side line as three hundred and fifty arpents, and giving the upper as three hundred and eighty arpents.—(See copy of certificate among the proceedings of the commissioners, Senate Doc. No. 45, p. 13. See also plat C, hereunto annexed.)

Several conveyances were also laid before the board respecting this portion of the claim, which it becomes important to examine, so far as relates to the language employed in describing the depth of the grant.

1. Conveyance bearing date 14th December, 1785, from the proprietor, Maurice Conway, to Patrick Conway, of "ten arpents of front, with the depth which comprehends the title of the said lands."—(Senate Doc. No. 45, p. 14.)

2. Conveyance, dated 17th March, 1802, from Patrick Conway to

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William Marrener, of "ten arpents of front, and the depth corresponding to the title granted by this government to Maurice Conway."—(Senate Doc. No. 45, p. 14.)

3. Conveyance, dated 8th January, 1805, from William Marrener to Daniel Clarke, as "ten arpents front, with the depth according to the title of concession conferred by the late government to the late Maurice Conway."—(Senate Doc. No. 45, p. 15.)

4. Conveyance, dated 11th June, 1805, William Conway to Daniel Clarke, of a portion of the land which he describes as "having ten arpents of face upon the river, bounded above by the lands of the buyer and below by those of the seller, and extends in depth to the river Amite, sold according to the general title which is in the vender, from having acquired it from Maurice Conway, by act of the 27th October, 1786.—(See Senate Doc. No. 45, p. 13.)

It will hereafter appear that the conveyance, above referred to, from Maurice Conway to William Conway, was produced before the board in the proceedings in relation to the third tract, and that it does not claim to the Amite.

3d. *The William Conway tract.*—In this case, as in the two former, a plat and certificate of survey were produced before the commissioners, under the signature of Lafon, bearing date 20th February, 1806, in which certificate he alleges himself to be a deputy surveyor under Isaac Briggs, surveyor general of lands south of Tennessee.

The certificate of survey states that the plat conforms to surveys executed by Andry, surveyor, in March, 1804, and those which he, Lafon, made in December, 1803, and makes the front twenty-seven arpents, and the depth extending back to the river Amite and Lake Maurepas.—(Senate Doc. No. 45, p. 6. See also plat D, hereunto annexed.)

The petition of Maurice Conway, and the proceedings thereon, were also produced.

Pursuing the order adopted in reference to the other tracts, I will now proceed to examine the conveyances offered to the commissioners in support of this branch of the title.

1. Conveyance from Maurice Conway to William Conway, bearing date 27th October, 1786, by which he conveyed to said William "twenty-seven arpents of front, more or less, with the depth according to the title of concession that his excellency Senor Count Galvez gave by his decree of the 21st June, 1777." By the same deed he also conveyed to said William eight arpents by forty in depth, acquired by transfer from the heirs of Landry, 18th October, 1776.—(See Senate Doc. No. 45, p. 10.)

2. Conveyance of Peter Part to William Conway, dated 27th March, 1791, by which he conveyed to said William, in exchange for other lands, "five and a half arpents of front, by the depth of forty arpents."—(Senate Doc. No. 45, p. 11.)

The only account I have been able to discover of the derivation of Part's title, is contained in the aforesaid certificate of Lafon, from which it appears that Conway claimed title to this portion of the lands included in the plat, under a conveyance of Maurice Conway to one Oliver Pollock, which it appears had belonged successively to a Dr.

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Anderson and one Belsey *alias* Miro, who, having died, four and a half arpents in front by forty in depth had been purchased by Part from his testamentary executor, and exchanged with said Conway for other lands. It is by no means certain that this included the whole of the title vested in Pollock, as will be seen by a reference to the deed of Maurice Conway hereafter mentioned. The only one of these conveyances produced before the commissioners in support of the claim to this tract, was the above-named deed of Part to Conway. The certificate also states that William Conway claimed the rear lands as heir to his uncle. This is the substance of William Conway's title, according to the certificate under which he claimed the whole lands described in the plat.

In addition to the conveyances laid before the commissioners, I find among the papers annexed to the memorial of the heirs of Wade Hampton, a Spanish copy of a deed by Maurice Conway to Oliver Pollock, bearing date March 5, 1778, which conveys "thirty-six arpents front, and the depth as far as the lake."—(See Hampton's memorial, p. 21.)

Annexed to the memorial aforesaid is also a mortgage by William Conway, describing himself as heir of Maurice Conway, to Oliver Pollock, bearing date February 5, 1795, in which he describes the lands mortgaged as "thirty arpents of front, and depth as far as the lake."—(p. 23.)

There is also among the papers transmitted from the General Land Office what purports to be a Spanish copy of a conveyance or mortgage by William Conway to John Joyce, dated April 7, 1798, in which he describes the lands mortgaged as "thirty arpents of front, and the depth as far as the lake."

The commissioners appointed in pursuance of the act of the 2d March, 1805, and possessing no other authority than what is conferred upon them by its provisions, confirmed these claims. The decisions on the Conway and Clarke claims bear date respectively on the 3d March, 1806, and the decision on the Donaldson and Scott claim on the 10th of the same month.

The following is that on the Donaldson and Scott claim:

"William Donaldson and John W. Scott claim a tract of land situated in the county of Acadia, on the left bank of the Mississippi, about twenty-two leagues above the city of New Orleans, containing twenty-nine arpents in front, with the depth to the river Amite, bounded on the upper side by land of one Simonet, and on the lower by land of Daniel Clarke. It appearing to the board, from an instrument of writing exhibited, that said land was sold at public auction on the 12th day of August, 1798, before Evan Jones, at that time commandant of Lafourche, to Louis Faure, and it appearing, from sundry deeds of conveyance, likewise exhibited, that said land has become the property of the present claimant, the board do hereby confirm his said claim."

The other two are so nearly similar that it is considered unnecessary to give them.—(Senate Doc. No. 45, pp. 12, 16, 21.)

These decisions were made before one of the commissioners became a member of the board; and, as far as he was authorized to do so, he dissented from them.—(Senate Doc. No. 45, p. 6.)

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Passing over, for the present, the consideration of the various acts of Congress subsequent to the decisions, it only remains, in order to exhibit a summary view of the case, to trace, as briefly as is consistent with a proper understanding of the subject, the action of the executive department of the government in relation to the claim, and especially of the General Land Office, and to examine into the circumstances under which the patents were issued, with the sole purpose of forming an opinion as to the legality of the authority assumed in granting them. In order to a better understanding of the subsequent proceedings, it is proper to remark, that the first two parcels above named were purchased by the late General Hampton, of South Carolina, prior to the issuing of the patents, and now appear to be claimed in common by Messrs. Preston and Manning, in the right of their respective wives, who were the daughters of said Hampton. The grantees of the Conway tract have also, as it would seem, conveyed their interest, which is now claimed by Mr. Rightor and others. No opportunity has been afforded to examine either of these conveyances.

On the 14th January, 1829, James P. Turner, then surveyor general, addressed a communication to Mr. Graham, Commissioner of the General Land Office, inclosing to him a rough plat of the tract claimed, showing its locality and extent, and that it interfered in part with other grants by the Spanish government, in which he says, that "the Spanish government did (previously and subsequent to the date of this grant) make other grants to a number of individuals within the limits now pretended to be covered by the grant of Conway; and, further, I believe it will not be denied that there never was any pretensions made for the present extent of the claim until after the right of the land in question became vested in the United States. And there is still another reason why this grant cannot be extended to the Amite river; that is, the petition of Conway, the decree of the governor, nor the proceedings of the surveyor, call for nor exhibit no such boundary; and it is a fact well known that it was the custom of the Spanish surveyors, in all cases where the grant called for specified boundaries, to exhibit such boundaries in their plat of survey. He also suggests that, if governed by the customs of the Spanish government, which he presumed could alone be the guide, he should commence at a certain point, run General Hampton "off such depth as would carry us back on the upper line, until it will intersect an older grant marked B, which appears to be strictly conformable to the decree of the Spanish governor, although this will not give the claim a depth of eighty arpents on the upper line, which I believe it was designed to have if found to be vacant." And he requests instructions.—(Sen. Doc. No. 45, p. 24.)

To this letter Mr. Graham replied on the 17th February, 1829, and expresses the opinion that the grant is so vague in its terms, as to boundary and quantity, that it will be necessary for the courts of justice to interfere, for the purpose of defining and designating both; and that it is impossible the courts can sanction the boundaries as claimed. He says, "the object and purpose for which the grant was asked and obtained will, therefore, be the leading considerations on which the courts will probably decide the question; and, in so deciding, they possibly may limit the grant either to the limits of the survey actually

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made by Louis Andry, or to the termination of eighty arpents, the usual extent granted when the front grant was deficient in timber or otherwise; or to the distance of one and a half league, as required in the petition. Should the court assume any of these limits, facts and circumstances may possibly occur in the investigation of the subject that may induce it (the court) to extend the back line so as to be equidistant from any part of the river. If, therefore, in making your surveys, you assume this limitation (to wit, a league and a half,) as the extent of the grant to Maurice Conway, dated the 21st June, 1777, I think that we shall have given full scope for the court to exercise its discretion; and if the grant can be so adjudged as to exceed those limits, then it must extend to the utmost boundary of Louisiana, as they existed at the date of the grant, and to which the two described lines can be extended." He further states that the decision of the commissioners can only be considered as recognizing the validity of the grant as a complete title, and not as confirming any other lands than those included in its terms; and directs the surveyor general, in laying down the tracts on his plat, to designate the boundaries as far as Andry surveyed by black lines, as also the confirmed claims interfering with it, and to delineate the residue of the tract by dotted lines.—(Senate Doc. No. 45, p. 26.)

Mr. Graham having thus decided that a league and a half in depth was not open to entry, and given directions acccordingly, the lands in the rear, between that and the Amite river, seem to have been treated as public lands, and numerous sales of them were made at the district land office.

The views of Mr. Brown, the successor of Mr. Graham, are also very clearly stated in his letter of the 17th June, 1836, addressed to the register at New Orleans. This communication appears to have been prepared in consequence of one received from Mr. Preston, wherein he applied for a patent; or in case one should not be issued, he requested that the lands within the limits of the claim should be withheld from sale, and that patents should not be issued for the parcels sold. Responsive to these requests, as it would seem, Mr. Brown says to the register, "that although this office cannot recognize the claim as confirmed, under any circumstances, to the extent contended for by the parties interested, yet, as the law prohibits the sale of any lands to which a claim was filed in due time * * *, the sale of any portion of the land within the limits claimed * * * is unauthorized." He therefore instructs him to withhold all lands within the lines claimed from entry, and to send an abstract of the sales made, that the issuing of patents may be prevented; and directs him, in case he should deem it necessary, to procure from the surveyor general a diagram showing the lands included in the grant as claimed before the commissioners.—(Senate Doc. No. 45, p. 28.)

On the same day he also addressed a communication to Mr. Nicholas, then one of the senators from Louisiana, by whom the letter of Mr. Preston had been sent to him, stating that, inasmuch as he did not consider the claim as recognized by the United States to the extent claimed, he could not issue a patent, but had directed the register to withhold the lands from entry.—(Senate Doc. No. 45, p. 28.)

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In 1837, Mr. Preston again applied to the General Land Office, alleging that the land officers at New Orleans had permitted preëmptions and floats to be located on the land, and requested them to be cancelled.—(Senate Doc. No. 45, p. 29.)

The papers in the case were thereupon submitted by Mr. Whitcomb, the then Commissioner, to Mr. Birchard, the Solicitor of the General Land Office, who, on the 2d December, 1837, gave his written opinion that the claimants have "no legal title or equitable right whatever to any land without the bounds of the tract heretofore surveyed for them, as derived from the Spanish government, from the Indians," or from the United States; and that the parties who had purchased had acquired an equitable, if not a legal, right to demand that their titles should be perfected; and suggested to the Commissioner that he should recommend to Congress to quiet all doubt about the titles of the purchasers by a special act.—(Senate Doc. No. 45, pp. 40, 42.)

On the 27th December, 1837, the memorial of Mr. Preston, in behalf of the heirs of General Hampton, before referred to, was presented to the Senate, in which he prays that the Commissioner of the General Land Office should be directed to refuse titles to those who had purchased by preëmption or otherwise, by refunding the money paid and taking up the certificates of entry as far as possible; as, also, that he should be directed forthwith to issue a patent for the whole of the claim. This memorial was ordered to be printed on the 29th January, 1838, and is Senate Doc. No. 144, second session Twenty-fifth Congress. The Journal of the Senate shows that the Committee on Private Land Claims, to whom it had been referred, were discharged from the subject on the 7th July, 1838.

It next appears that Mr. Secretary Woodbury, on the 14th February, 1838, made a communication to the Senate respecting land claims in Louisiana, containing a report from Mr. Whitcomb, in which the latter concurs in the aforesaid conclusions of Mr. Birchard with respect to the claim.—(See Senate Doc. No. 197, second session Twenty-fifth Congress, p. 2.)

Nothing further seems to have been done in the case until the 19th March, 1839, when an application was made in behalf of some of the purchasers from the government for patents, and suggesting, also, that the land officers should be directed to receive payment from the preëmptioners who had presented the evidences of their claims.—(Senate Doc. No. 45, pp. 43, 48.) This application being referred to the Solicitor, he, on the 20th March, 1839, ahered to his former views, and expressed the opinion that the purchasers were entitled to patents. He, however, advised the Commissioner, as the question was important, and his predecessor had disagreed on the subject, that he should ask the opinion of the Attorney General and the direction of the Secretary of the Treasury.—(Senate Doc. No. 45, p. 48.)

Mr. Whitcomb, accordingly, on the 3d April, 1839, submitted the matter to Mr. Woodbury, the Secretary of the Treasury.—(Senate Doc. No. 45, p. 49.)

It is evident from the communication of Mr. Whitcomb of June, 1839, to the counsel of the parties applying for patents, as well as by the letter-book of this office, that the question in some form was submitted to Mr. Grundy, the then Attorney General.—(Senate Doc. No

45, p. 44.) In his letter of the 16th May, 1839, returning the papers to the Secretary of the Treasury, Mr. Grundy says: "I have had a full and free conversation with the Commissioner of the General Land Office, and we concur in the opinion that Congress alone possesses the power to make a fair and just disposition of the subjects in controversy; that much public mischief might arise should the executive branch of the government proceed to act at this time; and that Congress should be applied to at an early day in the next session to take such measures as justice to the respective parties may demand. Believing this to be the most correct and judicious course, I herewith return the papers relative to these two cases which were transmitted to me, at the same time assuring you that, should you think the public interest would be promoted by an earlier action on the subject, upon your giving me an intimation to that effect, and furnishing me again with the papers, I will promptly transmit to you such opinions as in my judgment the law of the respective cases will warrant."

It does not appear that any special report was ever made by the Commissioner of the General Land Office, but the Senate having before them the communication of Mr. Woodbury, of the 14th February, 1838, and the opinion of Mr. Birchard, with respect to this claim, which was transmitted at the same time, ordered the petition of Wade Hampton to be taken from the files, and referred to the Committee on Private Land Claims. (Senate Journal, 1st Sess. 26th Congress, p. 40.) In pursuance of this referrence, the committee reported a bill, No. 361 of that session, which proposed to confirm the claims made by Donaldson and Scott, and Clarke and Conway, "to the extent of two leagues fronting on the Mississippi, and running back for quantity," which was read the first time. No further action appears to have been had on this bill, and it never became a law.

The counsel for the purchasers from the government having again applied to the Land Office for patents, the Commissioner, on the 3d October, 1840, addressed a communication to the Secretary of the Treasury, giving further explanation in regard to the claim, in which he states the reporting of the bill above-mentioned, limiting it to two leagues fronting on the Mississippi, and running back for quantity, and that this "must be understood as two leagues superficial measure," and that it furnishes an indication that the claim was not considered of greater extent. He further states, that the purchasers of the back land were desirous that patents should issue to them, and others residing on different portions of it were anxious the same should be brought into the market. He therefore requests instructions in the premises, suggesting, as but a short time would elapse before the next session of Congress, whether it would not be better to defer any further steps until opportunity was afforded for legislation. (Senate Doc., No. 45, p. 53.) And Mr. Woodbury concurred in this suggestion.—(Page 54.)

It further appears, by a communication from the register of the land office at New Orleans, of the 13th February, 1841, that Mr. Rightor applied to him for three patent certificates, in the names of Donaldson and Scott, Clark, and Conway, and produced plats to him, drawn by H. T. Williams, then surveyor general of Louisiana, and certified by

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him, that having referred to the letters of Mr. Graham and Mr. Brown, he had been led to the opinion that the claims were never considered as definitely confirmed; and that, under these circumstances, he had declined issuing the patent certificates, and he requests instructions. (Senate Doc. No. 45, p. 54.) In reply to this letter, Mr. Whitcomb, on the 30th June, 1841, requested the register to defer any action on the application to issue patent certificates, until he should be instructed on the subject by the department.—(Page 55.)

It appears, however, that in the meantime an application was made to the register at New Orleans for certified copies of the proceedings before the board of commissioners who had confirmed the claim, and that on the 12th June, 1841, the register had furnished them in the cases of the Donaldson and Scott and Clark claims. He certifies in the case of the first-named parties, as follows: "that the document just above written is a full copy of the decision of the late board of commissioners, for the eastern district of the late Territory of Orleans, on the claim of William Donaldson and John W. Scott, as taken from the decisions on land claims of said board in this office." He also certifies "that the foregoing plat of survey, (Lafon's plat,) and the several other documents produced in evidence in support of the claim, are true copies taken from the records in my possession, and forming part of the archives of this office." (Senate Doc., No. 45, p. 21.) The certificate on the proceedings in the case of the Clark claim, is in the same terms, (page 16.) That in the case of Conway is dated 16th September, 1841, and is also similar, (page 12.) It is alleged that these are *certificates of confirmation* within the true meaning of the acts of Congress relating to land claims in the Territory of Orleans. This point is one of considerable importance, and will be examined when I come to consider whether the patents were issued in pursuance of a lawful authority.

It also appears, that H. T. Williams, surveyor general of Louisiana, on the 6th July, 1841, certified from field notes of various surveyors on file in his office, plats and certificates of survey for the Donaldson and Scott and Clarke claims, carrying the boundaries to the Amite river, but excluding lands claimed under other grants. The Donaldson and Scott claim he certified to contain 36,582 acres, and that of Clarke, 28,117 acres.—(See certificates of survey, Senate Doc. No. 45, pp. 22, 23, and plats E and F, hereto annexed.)

On the 9th August, 1841, Mr. Isaac T. Preston, one of the counsel of Rightor, the claimant of the Conway tract, made an application to the Commissioner of the General Land Office, producing certain documents, and claiming a patent under an act of the 18th April, 1814. He also presented an answer to the report of Mr. Birchard. (Senate Doc. No. 45, p. 35.) These papers appear to have been referred to the Solicitor of the General Land Office, Mr. Hopkins, who, on the 30th September, 1841, expressed the opinion that the title was valid, that the extent of the claim was legally substantiated, and "with some hesitation," decided that the act of 18th of April, 1814, confirmed the claim, and that the claimants were entitled to a patent for the quantity of land confirmed to them by the board of commissioners.—(Senate Doc. No. 45, p. 35.)

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The application of Mr. Preston, the report of Mr. Hopkins, and other documents, were transmitted by Mr. Huntington, Commissioner of the General Land Office, to Mr. Forward, then Secretary of the Treasury, on the 14th February, 1842, requesting that the opinion of the Attorney General might be taken. (Senate Doc. No. 45, p. 89.) Before any opinion however was given, the papers were returned to the Land Office, no doubt with a view to procure a statement of the case; and on the 9th August, 1842, Mr. Blake, the successor of Mr. Huntington, again transmitted them in a communication to Mr. Young, Acting Secretary of the Treasury, giving a "history of the facts," and propounding certain questions for consideration, as to the extent of the grant, and whether the act of the 18th April, 1814, was applicable to and confirmed the claim. (Senate Doc. No. 45, p. 94.) The papers, it seems, were again sent to Mr. Legaré, then Attorney General, whose first action upon the subject was to submit to Mr. Blake the following important inquiries:

1. Whether "a patent has ever been granted on any complete rench or Spanish title, beyond the extent of one league square, within the Territory of Orleans?

2. "Whether any certificates of confirmation have ever been issued by the commissioners, on complete titles as aforesaid, beyond the extent of one league square?"

Mr. Blake replied to the *first* in the negative, so far as he had been able to ascertain by a cursory examination of the records. In explanations that followed, he deemed it proper to mention, that in the case of Miller and Fulton, confirmed by the act of the 29th April, 1816, Mr. Graham recognized the right of the claimants to a confirmation for a league square for each tribe of Indians from whom they purchased, and the patent was granted accordingly. The case is not stated as an exception to the general answer in the negative, and an examination of the whole communication to which I refer will show that it cannot be regarded in that light. He also answered the *second* in the negative, and gave some explanations. (Senate Doc. 45, p. 101.) About the same time, the counsel for some of the purchasers under the government made an application for patents, or to have their entries cancelled, and Mr. Preston made a representation upon the subject, in which he insisted that the aforesaid order of Mr. Brown was merely prospective in its operation, leaving the unlawful occupants in full and quiet possession, and that they subjected the land, timber, &c., to depredation, and therefore requested that they should be notified and warned of their true condition.—(Senate Doc. No. 45, p. 103.)

Mr. Legaré, on the 2d September, 1842, considered the question whether the land within the limits of the claim was subject to entry, and communicated the following opinion to the Acting Secretary of the Treasury:

"There can be no doubt, in my opinion, that the sales made to preemptioners within the (admitted or ascertained) limits of the Houmas claim, are entirely void under the 6th section of the act of 1811. But Commissioner Graham's order proceeded on the assumption that the lands he offered for sale were not included within the bounds of that

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claim. Commissioner Brown, without conceding its validity to the whole extent, seems to have admitted that it had been regularly preferred before the commissioners to that extent. I am not yet prepared, from any information I possess, to speak to this fact. I only answer hypothetically, assuming the lands in question to be within the claim as propounded to the commissioners under the acts of 1805, 1806, and 1807. The executive clearly had no authority to dispose of them without a special act of Congress. The Land Office will therefore refuse patents on all certificates which they shall be satisfied fall within that category. Whether the entries not heretofore patented shall be cancelled, depends upon the practice of that office, which must have been, I should think, settled long ago, and which I do not wish or mean to disturb.

As to patents issued by Mr. Graham, I see no remedy but in the courts. If issued on lands covered by a complete Spanish grant, they are, of course, *void*, and will be so declared whenever they shall be set up in an ejectment. I should have greatly preferred to retain my opinion on this as on the other points of this case for fuller consideration, and give it now only because it seems to be impatiently called for by the claimants." (Senate Doc. No. 45, p. 104.) No opinion was ever given by Mr. Legaré on the other points submitted, as to the extent of the grant, or whether the claim had been confirmed by the act of the 18th April, 1814.

Whilst the case was pending before Mr. Legaré, Mr. Blake addressed a letter, on the 7th October, 1842, to Mr. Newcomb, the surveyor general, in which, after stating that he finds a plat in his office certified by Mr. Newcomb, representing a survey of the Conway portion of the claim, he says that the extent was not finally settled, nor was the surveyor authorized to decide that matter, nor to approve of a survey, until the question was determined, and instructions given him; and concludes that, until the Attorney General should decide the question, the case must be considered as suspended. (Senate Doc. No. 45, p. 105.) Mr. Blake also addressed another letter to Mr. Newcomb, on the 8th November, 1842, on the subject of certain complaints made against him by persons representing themselves as residents on the Amite and Blind rivers, respecting the certificate given by him to the survey of the Conway tract, in which Mr. Blake states that he had been and was disposed to believe that, at the time, the surveyor general was not aware of the instructions of 1829 and 1836, and of the fact that the question of limits had not been finally determined by the proper authorities.—(Senate Doc. No. 45, p. 106.)

On the 20th January, 1843, Peter Laidlaw, the register at New Orleans, issued patent certificates in the Donaldson and Scott, and Clarke claims, and advised the Commissioner of the General Land Office thereof. The certificate in the first mentioned claim is as follows:

"It is hereby certified, that, in pursuance of the act of Congress passed on the 18th day of April, 1814, entitled 'An act concerning certificates of confirmation of claims to land in the State of Louisiana,' William Donaldson and John W. Scott have been confirmed in their claim to a tract of land situated in the county of Acadia, numbered 133 in the report of the board of commissioners for ascertaining and

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adjusting the titles and claims to land within the eastern district of the Territory of Orleans, dated at New Orleans, the 4th March, 1806, designated as (here the sections are described) containing 36,582 19 acres, as per plat herewith. Now, therefore, be it known, that, on presentation of this certificate to the Commissioner of the General Land Office, the said William Donaldson and John W. Scott shall be entitled to receive a patent for the land herein described." The certificate in the case of the Clarke tract is similar in its character.—(Senate Doc. No. 45, p. 125, and plats E and F hereto annexed.)

Mr. Blake, on receiving the letter of the register advising him of the issuing of these certificates, wrote in reply under date of the 10th February, 1843, stating that, by a letter of the 10 June, 1841, his predecessor had been requested to defer the issuing of a patent certificate until he might be definitively instructed by the department, and says: "In view of that communication to the register, I am surprised to learn that you have issued the certificates you mention; and, as questions connected with the confirmation and limits of the Houmas claim have been submitted to the supervisory power, and have not yet been definitively settled, you will recall those certificates, and suspend them until you receive further advice from the department." (Senate Doc. No. 45, p. 106.) He also advised Newcomb, the surveyor general, on the 28th of July, 1843, that he was not authorized to give an official sanction to any plat without definite instructions from the department.—(Senate Doc. No. 45, p. 111.)

Some of the purchasers from the government having applied to the General Land Office, in March, 1843, that the sales to them might be cancelled, and the purchase-money refunded to them, Mr. Blake submitted this subject to Mr. Spencer, then Secretary of the Treasury, on the 7th June, 1843. (Senate Doc. No. 45, p. 108.) Mr. Spencer accordingly examined the question submitted to him, and on the 24th July, 1843, communicated his decision to Mr. Blake, in which he states "that, admitting that Commissioner Graham was wrong, that the sales in question were unauthorized and void, yet the money paid is in the treasury, and it cannot be taken out without an application to Congress. The act of 12th January, 1825, authorizes this department to refund only when the United States has no *title* to the land sold, and that act does not reach this case; because, if the money is ordered to be refunded, that order must proceed on the ground that the Houmas title over the land in question is good. I cannot and will not decide that question. But I do not admit that Mr. Graham was wrong, and that the sales in question were unauthorized and void. The third section of the act of 3d March, 1811, I am inclined to think, had no other effect than to suspend the executive power to offer for sale lands to which claims had been duly preferred, until the final decision of Congress thereon. From the date of the confirmatory act, all lands lying without the limits of the claim, as confirmed, would be relieved from that suspension, and become *public lands*, and subject to preëmption rights attaching to public lands. The validity of these sales, therefore, depends on the decision of the question, 'when and with what limits has the Houmas claim been confirmed, if confirmed at all?' And, until that question is settled, no money can, under existing laws, be drawn from the

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treasury for the purpose of being refunded on account of these sales; the power to refund, under the act of 1825, depending in this case on the conflict of these sales with the Houmas claim as a valid and legal title, and not because they were made in violation of the act of 1811, as alleged." He, therefore, was of opinion that there was no authoriy in the department to refund the money claimed.—(Senate Doc. No. 45, p. 110.

The counsel for the purchasers, it appears, addressed a communication to Mr. Spencer, on the 12th August, respecting his decision declining to refund the purchase-money, which is not among the papers sent me. To this communication, Mr. Spencer replied, on the 28th August, 1843, as follows: "The case is briefly this: the Secretary of the Treasury is authorized by law to refund the purchase-money for erroneous sales of land only where the United States had no *title* to the lands sold. Whether this department can, in this case, regard the United States as having had *title* or not, depends on the decision of the question, whether the 'Houmas claim' has been confirmed by law, or its validity judicially established; and if so, to what extent? The power of this department to refund, in this case, depending on the conflict of these sales with the 'Houmas claim,' so ascertained and decided to be valid, I know of no 'confirmation or other legal establishment' of the Spanish grant to Houmas. It is because the question of title is to be determined by the courts, that I refuse to decide it. There may be a cloud upon the title of the United States which justifies the General Land Office in declining to issue a patent, and yet the want of title may not be so clear as to justify the Secretary of the Treasury in refunding the money. I have no doubt as to the meaning of the act of January 12, 1825, the only law authorizing the Secretary of the Treasury to refund in cases of erroneous sales of lands. The Secretary of the Treasury is authorized by that act to refund only in cases where the purchase is or may be void, the United States having *no title* to the lands sold: 1st, by reason of a prior sale; or, 2d, because of the right thereto having vested elsewhere under a *prior* British, French, or Spanish grant, recognized by confirmation by Congress, or its validity otherwise legally established; or, 3d, from *want of title* thereto in the United States from any *other* cause whatsoever. It is for *want of title in every case*. For *such* erroneous sales he may refund, and for such only, under that act. Or, in other words, Congress has intrusted to the Treasury Department the power to refund only where the sales were *absolutely void* for want of *title* in the United States; but where *voidable* only against the United States, it has reserved to itself the power either to confirm the sales or to refund the purchase-money; or, at all events, it has not granted it to the Treasury Department.

"As to the alleged issue of 'patent certificates' for the 'Houmas claim' to its full extent, which you seem to regard as conclusive on the question of *title*, I have to remark that, whatever has been issued purporting to be a 'patent certificate,' has been issued not only without the authority, but against the express instructions of the Commissioners of the General Land Office, and that a knowledge of the erroneous and unauthorized issue is believed to have been brought home to the holders. Even if the 'Houmas claim' were confirmed, whether patent certificates,

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or even a patent, could in that case rightfully be issued therefor, (and, of course, if issued, their legal effects as such,) would depend on the fact whether there was any *provision* of *law* authorizing the issue of such evidences of its validity; and this department can recognize nothing purporting to be a 'patent certificate' as having any effect whatever on the question of title, until it first appears that it is authorized by *law* to be issued *for this claim*, and that it has been regularly and fairly issued.

"I am of opinion, however, that the act of April 18, 1814, to which you refer, authorizes 'patent certificates' and patents to be issued only for claims to tracts not exceeding a league square, which, by the act of March 3, 1807, the commissioners had power finally to decide, and did so decide; and that, of course, it has no application to the 'Houmas claim,' which was submitted, in pursuance of law, to Congress for its final decision.

"I regard Mr. Wirt's opinion, to which you refer, as having but little bearing on this case; it is founded on the admission that there was no authority in that case to sell, the land having been excepted from sale by act of Congress. In this case, however, I am inclined to think that the acts of 1806 and 1811 merely *suspended* action until the final decision of Congress on the claims; and that, in sales made after the confirmation of the 'Houmas claim,' within its limits as claimed before the commissioners, but without its limits as confirmed by Congress, there would be no want of authority to sell. But, however that may be, this department is not authorized to refund money for sales *erroneously merely*, but only for sales erroneous *because* the United States had *no title* to the lands sold. If, therefore, these sales were clearly unauthorized, still this department has no power to refund until it is ascertained whether the United States had or had not *title;* or, in other words, whether there has been a 'confirmation,' or other legal establishment of the 'Houmas claim,' and to what extent; and if so, in what cases the sales conflict with it."—(Senate Doc. No. 45, p. 112.)

Mr. Spencer, on the 15th November, 1843, addressed a further communication to another counsel of the purchasers, in which he states, "that the claim which he had decided was disposed of on the assumption contended for—that Commissioner Graham was wrong in making the sales, and that they were unauthorized and void. Assuming the ground that the act of 1825 would not authorize the Secretary of the Treasury to refund, except another point was settled by him, viz: that the United States had no title. This I refused to decide. Now, all this had nothing to do with determining the limits of the Houmas claim, be they more or less. That claim has been confirmed to a certain extent, or it has not. If not at all, then the title of the United States is not shown to be defective as to any part; if confirmed to a certain extent, and the sales by Commissioner Graham were without the limits of the claim as confirmed, they were authorized. But I have not determined, nor will I undertake to determine, to what extent the Houmas claim has been confirmed. This is for the courts of law or Congress to decide." (Senate Doc. No. 45, p. 114.) He afterwards returned the papers to the General Land Office, with a copy of his

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communication above mentioned, so that the Commissioner might see what disposition had been made of the claim.—(Page 113.)

There the matter seems to have rested until the 26th of May, 1844, when the counsel for the heirs of Hampton addressed a communication to the President, which he referred to the Commissioner of the General Land Office, and directed him to examine the case and give a condensed view of all the facts in writing. This communication and reference are not among the papers, but are mentioned in the report made in pursuance of the reference.

On the 28th of the same month, the counsel also addressed a letter to Mr. Blake, requesting that patents might be issued, and that as an application of a similar character had been made some time before, when the embarrassments that existed were such that the Commissioner did not feel authorized under the circumstances to issue patents, and, as he might feel an unwillingness to give the final decision without the advice of the Secretary of the Treasury or the Attorney General, he, the counsel, had no objections, but, on the contrary, should desire their opinion, and should be pleased if the application with the papers in the case were submitted to them. (Senate Doc. No. 45, p. 115.) He also inclosed an opinion by Mr. McDuffie and Judge Huger, of South Carolina, in which they express the opinion that the parties are clearly entitled to the patents under the act of 18th April, 1814, (page 120.) In consequence of this request, Mr. Blake, on the same day, submitted this application to Mr. Young, Acting Secretary of the Treasury, for the opinion of the Attorney General, and his instructions.—(Page 116.)

On the 5th June, 1844, Mr. Blake also made the report requested by the President, in which, after reciting the case, he states as follows: "In Mr. Johnson's letter to you, he refers to the act of 12th April, 1814, as requiring patents to be issued for claims not exceeding a league square, and to the act of 18th April, 1814, as, 'requiring patents to be issued on all claims which are included in the transcript of decisions made in favor of claimants, and transmitted to the Secretary of the Treasury,' states that, by these two laws, all the claims should be patented when surveyed, which had been confirmed by the board of commissioners; and suggests that an order be given to issue patents in all such cases, when the requirements of the law are complied with. For claims confirmed by the act of 12th April, 1814, this office, on the presentation of the confirmation certificates required by this act, with the approved plats of survey, is prepared and will promptly issue patents in all cases that are regular and free from difficulty; but as to the act of April, 1814, the decision of the late Secretary confines the act to cases not exceeding a league square. The question, however, as to whether it is coextensive with every claim favorably decided on in the transcripts, is now *sub judice* by the late submission of the papers to the Secretary of the Treasury *ad interim*, and a final decision on that point by the Executive will of course govern the action of this office." This report was not among the papers sent me, but was furnished by the counsel of the claimants.

The counsel for the claimants having filed an argument in support of the authority to issue patents, which will be found in the Senate

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document before referred to, (page 117,) Mr. Secretary Bibb, on the 13th August, 1844, transmitted to Mr. Blake his decision, that patents ought to be granted on the Donaldson and Scott, and Clarke claims, and that persons who had been permitted to enter lands within the boundaries of the three claims should have a return of the moneys paid by them according to the principles of an opinion before given by him.—(Senate Doc. No. 45, p. 126.) A copy is also hereto annexed.

In pursuance of this decision, the Commissioner of the General Land Office prepared the drafts of two patents, in the nature of quit claims, for the Donaldson and Scott, and Clarke tracts, according to the form used in the office in similar cases. The counsel for the claimants, however, objected to certain clauses in the forms prepared, and on the 28th August, 1844, the matter was submitted to the Secretary of the Treasury. The grounds of the objection were, that in the proposed conveyance by the United States it was declared, that it should be "subject to any just claim or claims, to all and every part thereof, of all and every person or persons, bodies politic or corporate, derived from the United States, or from either the British, French, or Spanish authorities," and that the habendum was made "subject to any just claim or claims as aforesaid," and "so that neither the United States, nor any other person claiming under them, except as is provided in said act and the reservations aforesaid, may or can set up any right or title thereto." The Secretary of the Treasury directed these clauses to be omitted in the patents.—(Senate Doc. No. 45, p. 132.)

The patents were accordingly issued, and bear date on the 22d day of August, 1844, and are signed by the President, and not by his Secretary. Having been transmitted to the counsel of the claimants on the 28th August, 1844, he, on the 19th October following, acknowledging their receipt, entered a caveat, that in receiving them for a portion, the claimants do not relinquish their right, title, or claim, to the residue; but, on the contrary, they will assert and maintain their right to the entire extent of the original claim.—(Senate Doc. No. 45, page 134.)

The Donaldson and Scott, and Clarke tracts having thus been patented, two several applications were made in September and October, 1844, for a patent for the Conway claim. (Senate Doc. No. 45, pp. 134, 135.) And the surveyor general was afterwards instructed to furnish the register with a plat in accordance with the decision of the Secretary of the Treasury. The register was also advised of the decision.—(Pages 137, 138.)

The certificate of survey and plat were accordingly made by the surveyor general, in this case, and bear date the 25th November, 1844, and they, together with the patent certificate, were transmitted by the register to the General Land Office on the 7th December, 1844.—(See annexed plat, marked G.)

Before, however, the return of the plat and patent certificate to the General Land Office, a resolution passed the Senate on the 10th December, 1844, directing the Secretary of the Treasury to communicate a copy of his written opinion, directing patents to be issued, with copies of the opinions given by the other officers connected with the General Land Office in relation to the claim, together with copies of the sur-

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veys, and of the transcripts of confirmation. (Senate Journal, p., 28.) These papers were accordingly transmitted to the Senate on the 8th January, 1845, and compose Senate Document No. 45, so often referred to.

On the 7th day of January, 1845, the following joint resolution was passed in the House:

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the issuance of grants or other evidences of title upon a Spanish land claim in the State of Louisiana lying on the Mississippi above New Orleans, commonly known as the Houmas claim, be, and the same are hereby prohibited until the further order of Congress in relation thereto."

This resolution having been sent to the Senate on the same day, was there amended, so as to read in terms similar to the joint resolution of 1846, under which this xamination is made. This amendment was sent to the House on the last day of the session, but was not taken up, and therefore failed to become a law. In consequence of these proceedings, Mr. Blake seems to have held the case suspended.

On the 5th March, 1845, a communication was received at the General Land Office, in behalf of the claimants of the Conway tract, inclosing a letter from one of their counsel to the President, dated March 3, 1845, requesting him to direct the Commissioner to issue a patent in conformity with the decision made by the Secretary of the Treasury. With that letter is a note from the Secretary of the same date, stating that the three claims "are confirmed, and therefore patents ought to issue, if not already issued, conformably to the opinion" delivered by him. Under this note is an order of the same date from the President, requesting the Commissioner to "issue patents in conformity with the above recommendation and opinion of the Secretary of the Treasury." But Mr. Blake still deferred action on the case.

On the 12th May, 1845, another application for a patent was made by Mr. Isaac T. Preston, as counsel for the claimants, to Mr. Shields, the successor of Mr. Blake, who on the 24th June following, submitted the same with a report to Mr. Secretary Walker, in which he states, that under the decisions of the Supreme Court, he feels bound to regard the grant as within the scope of the authority of Galvez, and as lawfully executed by him, but that the question still remains as to the extent of the grant. On this point, after stating the answer in behalf of the claimants to the opinion of Mr. Birchard, he says: "It is then admitted that there was no actually defined rear boundary to the Houmas, but under the Spanish usages a navigable water course is claimed as that boundary. Mr. Graham was of opinion that the boundaries of the grant must be fixed by the courts, and in order to give scope for their discretion, limited the survey of the rear line to a league and a half, thereby giving upwards of 18,000 acres to the claim. * * * Looking to the object for which the grant was asked, I feel constrained to say, that I cannot decide that the usages of the province authorized such an extension, or that Galvez contemplated a grant for such an extent of territory, but must agree with Commissioner Graham and Secretary Spencer, that the rear boundaries should be determined by the courts or by Congress." He further states, that

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he cannot satisfy himself that the act of 18th April, 1814, has reference to any cases except those on which confirmation certificates were authorized to be issued for claims to the extent of a league square; concurring on this point also with Secretary Spencer, and answering the question what was required of the executive officers under existing laws in regard to this claim, he states, that under the provisions of the act of 3d March, 1811, the land to the extent claimed should have been reserved from sale until the final decision of Congress. The act referred to declares, "that till after the final decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has been in due time, and according to law, presented to the Register of the Land Office, and filed in his office, for the purpose of being investigated by the commissioners appointed for the purpose of ascertaining the rights of persons." The report continues, that "by this course the claimants would be left to their original grant on which to rest and defend their rights under the supreme law of the land, and the Executive in any future proceedings would be governed by the decision of Congress, and of the courts;" and alluding to the directions of the former Secretary of the Treasury, and the President to issue a patent, he requests instructions on the subject.

The joint resolution directing the Attorney General to make this examination, having subsequently passed, Mr. Secretary Walker has suspended the giving of the instructions requested.

On the 6th June, 1846, the Senate passed a resolution directing the Commissioner of the General Land Office to furnish certain information respecting the Donaldson and Scott, and Clarke claims, the nature of which will appear from the answer of that officer.—(Senate Journal, p. 329.)

On the 10th June, the Commissioner made his report, which on the 12th was ordered to be printed.—(Senate Doc. No. 389, 1st session, 29th Congress.)

It appears by that report that the number of acres in these two tracts, according to the claim is.....	82,111.00
The aggregate of acres embraced in the two patents is.....	64,699.79
The difference about.....	17,411.21

The seventeen thousand acres of the claim which was thus excluded from the patents are represented to be situated on the Iberville, or Manchac, and Mississippi rivers, and to be embraced in other private claims, and the report refers to the blue color, on plat H, to exhibit their location. It states that the number of patents issued for lands purchased within the limits of this claim, as patented was twenty, containing 2,739.48 acres, that eleven of these patents had been surrendered to be cancelled, and that the amount of the purchase money refunded thereon was $2,163 12½; that the number of entries upon which application had been made to refund the purchase money, since the issuing of the patents, was one hundred and four, containing 17,002.83 acres, and that the amount refunded was $21,253 54. By a

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statement among the papers, it appears that the total number of acres entered under preëmptions and otherwise in the three tracts, and the purchase-money received thereon, were as follows:

Acres	40,253.75
Purchase-money	$50,327 32

I regret that I have not found it consistent with a proper understanding of the subject to abridge this narrative within narrower limits. Its length has much exceeded my expectations. It was, however, in some degree unavoidable, in order to present a clear view of the case to the President, on whom important duties are devolved by the joint resolution, in the event that my opinion should be adverse to the authority assumed in granting the patents. If any errors have occurred in selecting what appeared to be material, a reference to the source from which I have drawn will at once correct them.

I will now proceed to examine the legal questions on which I am directed to report my opinion.

In the first place, I am of opinion that the grant by Galvez to Maurice Conway is a perfect and complete grant, duly made and consummated before the cession of Louisiana to the United States, protected by the treaty of cession, and, in the language of the Supreme Court, in the case of the United States *vs.* Wiggin, (14 Pet., 350,) is "intrinsically valid, and needs no sanction from the legislative or judicial departments of this government."

The great question to be determined, however, as before remarked, is the extent of the lands which were severed from the domains of the crown of Spain by the terms of the grant; or, in other words, the limits and boundaries of the tract secured, and guarantied by the treaty.

The claimants contend that it includes not only the lands surveyed and severed, but all the rear lands above described, as far as the rivers Amite and Iberville and lake Maurepas. It must be admitted that the language of the petition is somewhat broader than the survey and location. But, if there were no other means of identifying the land, or of ascertaining the limits, than are to be found in that source, I would be compelled to hold that the whole proceedings are so vague and indefinite that the grant must be considered void on that account. It is insisted that the words of the grant are so fully explained and qualified by the general expressions of the preamble, decree, and petition, as to avoid all such uncertainty, and manifestly to authorize such an interpretation of the terms of the grant, and of the description therein of the land granted, as will give to the grantee, and those claiming under him, all the domain in the rear of the first concession, belonging at that time to the government of Louisiana. In furtherance of this view, it is insisted that the several papers, when considered together as parts of one transaction, will admit of no other limitation than the one assumed, which extends the depth to the boundaries of the province. This cannot be admitted, it seems to me, without overlooking entirely the first action of Unzaga upon the petition of Conway, in which he directs *the setting and marking of the boundaries;* nor without rejecting altogether the essential parts of the

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official survey, made in pursuance of that order, and constituting the most important element of the proceedings upon which the final decree or grant was based. After full consideration of the question, I dissent from the views of the claimants, and have come to the conclusion that, by the terms of the grant and preliminary proceedings upon which it is founded, a complete legal title vested in the said Conway only to the extent of the survey, making the side lines forty-two arpents in the depth, or half a league from the front on the Mississippi river.

In forming this conclusion, I have not been unmindful of the importance of the suggestion that the evidences of title, in this case, are not to be measured by the strict, though just and certain, rules of the common law, but should be considered in connection with the usages and customs of the province prevailing at the time when the grant was made. The propriety of the suggestion is freely admitted, and has been fully weighed. It led me to examine whether there was any recognized usage or regulation which could come in aid of the proceedings to expand the legal rights of the party beyond the survey and well-defined location upon the land. No case has been cited disclosing any such custom, usage, or regulation; and it is presumed none can be found, where the principle has been approved by the courts of the United States. Until that principle shall have been sanctioned by the courts of this country, I must hold that it is not competent for a judicial tribunal to enlarge the boundaries of a grant beyond the actual survey and location upon which it was made. It is even more certain that the principle cannot be sustained where, as in this case, the description of the land contained in the grant and papers annexed to it, is too indefinite and uncertain to give it force and effect, without the survey and location upon which it is based. It is too well settled, I think, to be controverted that, according to the laws, usages, and customs of the Spanish government, nothing short of an effective grant from the governor could confer a complete title, either to a front or back concession. It is undoubtedly true that an incomplete right might be acquired under an order or warrant of survey. Back concessions, it seems, were seldom made; and in no instance of which there appears to be any authentic account, except to the proprietors of the front; and, where made, uniformly had a depth of forty arpents, reckoning from the rear line of the first concession. But the same forms of title appear to have been required in the one case as in the other; and in no case could a fee simple estate be acquired from the government, without the severance of a definite tract from the mass of the public lands, under the operation of a complete grant. Under these circumstances, I find myself obliged to decide, upon the facts before me, that the complete title stops with the limits of the survey and location. The examination which I have made of the question has produced full conviction on my mind that there is no principle of law, that has been recognized and approved, to justify the extension of the complete fee-simple title beyond those limits; and I can conceive of none which it would be safe to apply to the titles of real estate to expand them. Any other rule of interpretation of the legal rights of these parties, in this respect, would be controverted in every stage of the proceedings under which they claim. It would be impeached

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even by the prayer of the petition of Conway, in which he asks to be put in possession of the front and depth, setting the boundaries. It would be in direct conflict with the order of Unzaga, addressed to the surveyor, in which he directs that the surveyor shall set and mark the boundaries. It would repudiate the whole survey upon which the front as well as depth, in a great measure, reposes under the grant; and it would be wholly unsupported by the final decree or grant, which merely approves the previous operations, and grants the land accordingly.

In order to test the correctness of the conclusion, it may be proper to examine with more care the grounds upon which it rests, and to consider the objections that may be urged against it, and to compare both with some considerations not appearing upon the face of the papers.

It is too well known, I think, to be disputed, that the regulations of O'Reilly were in full force at the date of this grant, and the survey of Andry. By the twelfth article of those regulations it is declared, that "all grants shall be made in the name of the king, by the governor general of the province, who will, at the same time, appoint a surveyor to fix the bounds thereof, both in front and depth, in presence of the judge ordinary of the district and of two adjoining settlers, who shall be present at the survey. The above-mentioned four persons shall sign the *procés verbal* which shall be made thereof, and the surveyor shall make three copies of the same, one of which shall be deposited in the office of the scrivener of the government and cabildo, another shall be delivered to the governor general, and the third to the proprietor, to be annexed to the titles of his grant."—(1 Clarke's Land Laws, p. 979.)

It has never been questioned, I believe, that these regulations, during the period they were in force, were of binding obligation upon subordinate officers; nor is there any pretense that Unzaga relaxed their operation in this case, or dispensed with their requirements. On the contrary, it is shown by his decree, that they were substantially reaffirmed and reënacted, in his order directing the surveyor to set and mark the boundaries. But suppose it were otherwise, they constitute the best known guide to the usages and customs of the province in regard to surveys. In this respect all will agree, I presume, that they should have considerable influence upon the question, as constituting the most authoritative exposition of the law-making power of the province upon the general subject of surveys. They furnish, also, the best known criterion by which to judge what kind of a survey was required, when the terms of the grant were indefinite, to work a severance of the tract from the domains of the crown, and to convert it, under the operation of the grant, into private property.

It cannot be admitted, at this day, that any other lands pass by a conveyance or grant, than such as can be identified and defined by some of the modes authorized by law for ascertaining such facts. The Spanish regulation, it seems, required the bounds to be fixed in front and depth, in presence of the judge ordinary and two adjoining settlers. All the requirements of the article, so far as they are applicable to the duties of a surveyor, were obeyed and followed in this case.

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This appears by the official certificate annexed to the title of Conway. A slight examination of the order of survey issued upon the petition, and of the certificate of survey, will be sufficient to demonstrate that the twelfth article of these regulations constituted the guide at least in these proceedings. The order or decree heretofore given in its exact language bears date at New Orleans, 27th September, 1776. The proper officer is directed, in substance, to go to the land, and put the petitioner in possession of that which may be vacant in the rear of his plantation, provided it is not claimed by others, and the possession so to be given do not injure the adjoining occupants, "*to the effect of which,*" according to the translation of the claimants, "*he shall set and mark the boundaries;*" or, according to the version, (1 Clarke's Land Laws, p. 955,) "*to which effect he shall establish his boundaries and limits.*" The disagreement is only in the form of expression, and cannot affect the merits of the question, both versions requiring the surveyor to mark or establish the boundaries of the tract to be surveyed. The regulations show what was intended by the order requiring the setting and marking of the boundaries; it was, in the emphatic words of the twelfth article, to fix the boundaries thereof in front and in depth.

Assuming that the tract does not extend beyond the forty-two arpents in depth, then Andry obeyed the directions of the authority under which he acted, performing his duty according to law, and his return is fully sustained. One class of the decided cases, cited by the counsel, lays down a principle of much importance on this point. It is, that an act done in pursuance of a public authority is presumed to be correct, or that "he who alleges that an officer intrusted with an important duty has violated his instructions, must show it." Upon no just principle can those claiming under Conway be permitted to deny either the accuracy or the completeness of the certificate of Andry, as it is a necessary part of the title papers to uphold their rights, and bears upon its face the signature of Conway, placed there by himself, in pursuance of the regulations aforesaid. It is essential to the validity of the grant itself; and without it, in my judgment, these parties would take nothing by their claim. The manner of the survey, and the extent of the operations in the field, are stated in the official certificate with great particularity, showing a strict and full compliance with the rules of survey prescribed in the regulations of O'Reilly. It is only necessary to advert to the action of the surveyor when he closed the survey on the side lines. The last monument planted by him on the upper line was at the distance of forty-two arpents from the river. Did this close the survey on that line? The certificate so declares at the commencement of the next sentence: "This line being thus drawn, I went to the lower one, common with Michel Chiasson," is the language in the translation of the claimants; and in Clarke's Land Laws it is still stronger: "This line being concluded, I went to the lower one." The inquiry as to which of the translations is most literal, becomes immaterial, as each is alike conclusive, that this line was finished and terminated at the last monument described, which was at the distance of forty-two arpents from the river. The manner narrated in which the lower line was surveyed is not very dissimilar, and is given with equal care. It concludes, according to the translation of

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the claimants, "in order that the direction may not deviate," after describing the last monument set in the field, which was at the distance of forty-two arpents from the river, making the depth correspond exactly with the other side line. Both lines are ended at points clearly ascertained and marked by monuments on the land. Some reliance is placed upon the closing words of the sentence in which Andry describes his last act, in the survey on the lower line. No such remark was made when he closed the upper line. These words are rendered in the copy of the certificate appearing in Clarke's Land Laws, as follows: "In order to keep the course;" and are evidently descriptive of an intent which had been performed. They refer to an act done; to one that was complete, and not to one that remained to be performed. The order under which he acted authorized him to fix and mark the front and depth of the tract surveyed, and there his authority ceased. These acts were performed according to law, in the presence of the judge ordinary, and of the two adjoining neighbors, to whom, as well as to Conway, it was important to preserve the evidence of the course which he had run from the river, to the depth of the tract surveyed and located. The monument of which he was speaking had been planted to keep the course, as had been all the others previously described. It was not necessary to certify the purpose for which they had been planted at the close of each description of the cypress or mulberry stake, used to designate the intent; that was left for the close, and the words apply as fully to the first monument on the bank of the river, as to the one which marked the depth of the last line surveyed. He was speaking of an intent which had ripened into an act. It is no more or less than if he had said, I have planted all these monuments to keep the course and mark the boundaries of the land. This is evident by the concluding portion of the certificate, which immediately follows in these words: "And in order that all the above may appear, I give the following certificate." This certificate is signed by Andry, Judice, and Conway, and alleges the reasons why the adjoining neighbors did not affix their signatures, which was, that they did not "know how to sign."

The figurative plan or sketch of the operations delivered to the grantee was not laid before the commissioners who passed upon this claim under the act of 1805, nor is it among the papers submitted to me.

It is thus demonstrated, as it seems to me, that the survey was made in conformity with the twelfth article of O'Reilly's regulations; and that it terminated on each side line at the distance of forty-two arpents from the river, the bounds having been fixed, both in front and depth, in pursuance of the prayer of the petition, and in obedience to the order of Unzaga.

The binding character of the treaty stipulations, in regard to the rights of private property, is too apparent, and has been too frequently recognized by every department of this government, to render it necessary to remark upon any of the views which have been presented to enforce and illustrate that obligation. There cannot be any difference of opinion between the counsel and myself on this point, after we shall have ascertained the nature and character of the rights acquired under

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the former government, which are entitled to that protection and guarantee.

In further examining the question for that purpose, it now becomes proper to consider the principal evidence of title upon which these parties rely, which is the grant issued by Galvez, on the 21st June, 1777. The argument for the claimants proceeds upon the ground, that the extent of the lands granted must be ascertained and measured by the descriptive words and sentences that precede the granting clause, aided by similar expressions to be found in the petition of Conway, and the preliminary proceedings, overlooking the fact, as it seems to me, that no one of the sweeping expressions to which they refer, gives either courses, distances, or monuments, or affords any other definite and certain rule by which to mark the limits and boundaries of the tract upon the land. The strength of the argument consists in the reliance which is placed upon the words, "all the vacant lands in the rear of the first forty arpents." These, it is insisted, in the connection in which the are employed, are broad enough to embrace their whole claim, and cannot be interpreted to include less, without distorting their true meaning, or departing from their usual and ordinary signification. There might be some force in the reasoning, if the words selected were as comprehensive as is supposed; and if, in their application to the subject-matter in dispute, they were certain to a common intent, or more especially if there were not other words in the same instrument evidently introduced to negative the expansive construction for which they contend, by limiting and qualifying their meaning, and thus giving force and effect to the grant. Let us examine the terms of the grant, solely with reference to its limitations, and see whether it be not so guarded, notwithstanding the peculiar structure and form of the instrument, as to defy every attempt to misunderstand its true meaning and effect. It is manifest that it is based upon the *procés-verbal* or official certificate of survey. The correctness of this conclusion is demonstrated by the following considerations:

1. The maker certifies that he had seen the proceedings of Andry, which could only refer to the return of his doings in the survey and location.

2. He declares them to be conformable to the rules made, touching the surveying of lands and adjoining neighbors.

The form of the expression, in referring to the rules of surveying, clearly indicates that they were made previous to his coming into office, and, unquestionably, has reference to the aforesaid regulations of O'Reilly, which he found in full force when he assumed the duties of first magistrate of the province.

3. Certifying the consent of the adjoining owners, from the allegations of the certificate, of which he could have no personal knowledge, he approves of the operations.

4. The granting words are not followed by any description of the premises. The grantor evidently referred to the general designation of the tract which preceded the granting clause, and relied upon the following limitation to qualify and render explicit the whole purpose of the grant.

5. Then comes the limitation which defines and exemplifies the

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meaning and effect of the whole instrument. "In order that, as his own property, he may dispose or enjoy the same conformably to the said operations."

6. The grant refers to "*the foregoing decree of my predecessor*," under whose administration the proceedings had been commenced and perfected to the completion of the survey and location; and there is not a word in it affording the slightest pretense that Galvez intended to do any more than to confirm those proceedings, and give them force and effect according to the survey; and with that manifest intent he granted the lands, limiting the grant to the previous operations.

But suppose it were otherwise, and the rights of these parties to the back lands reposed entirely upon the general descriptive expressions to be found in the grant or order of survey and petition, then I think the grant, upon principle and authority, so far as it relates to these lands, would be void for uncertainty. It would be impossible by any means which they afford, unaided by the survey and location, to identify the land, which the title papers purport to sever from the public domain. It is necessary, in order to effect a severance, not only that the words should be sufficient to convey title, but in the absence of any positive location, that the description should be such that those claiming under the grant can identify the land. To meet the pressure of the case in this respect, the parties in interest expand their claim to the boundaries of the province, giving up all the intermediate points of limitation.

It is a great mistake, however, to suppose that the language even of the petition, when taken in its broadest sense, will bear an interpretation to sustain any such widely-extended limits. Like all other instruments, whose meaning is obscure, it must be considered as a whole in order to ascertain the intention of the maker. It clearly was not the intention or expectation of Conway that its descriptive words should mark the limits of the grant; any such hypothesis is contradicted by the prayer of the petition, in which he asks that he may be put in possession of the front and depth, "setting the boundaries." The description set out in the petition was only intended as a general designation of the place where the land was situate, which was to be surveyed, located, and bounded, under the regulations of law. The vague and indefinite description given was doubtless sufficient to enable the governor to determine whether it was expedient to issue the order of survey. It was for that purpose alone that it became necessary to employ any descriptive words in the petition; and in some instances it will be found that no description was given. If the petition had prescribed the boundaries, then, in a practical point of view, the survey was unnecessary; it became a mere form to meet the requirement of law. The order of survey, and the operations under it, completely negative any such assumption. The boundaries even of the front concession were not known, and could not have been given till after the survey; and it was doubtless a leading object of the proceedings to ascertain and define the extent of the front. Moreover, there is no language in the petition, when considered in its proper connection, that will sustain the views of the claimants, or bear out the interpretation for which they contend. The words "all the depth which may be vacant" evidently refer back to the previous recitals. That these recitals fall far short of

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the boundary claimed, is most manifest. There is not an expression in the paper, when read in its proper connection, that makes any considerable approximation to such a theory. The petition represents that the front was destitute of fences, and it being cleared out upwards of a league in depth, and the cypress being at the distance of about a league and a half, the petitioner had no right to that growth. There is some want of clearness in regard to the nature of the right of which he was speaking; it is highly probable, however, that he referred to the permissive right, enjoyed by front proprietors, to take timber from the back lands for fences, and other needful purposes, on a plantation. This may be inferred from what follows, when he says he had "no right thereto, in consequence of your not having granted to him but the common depth of forty arpents, which is so short that he *cannot reach* the cypress trees." Omitting what is of no importance, then follow the words so much relied on to expand the grant to the full limits of the claim: "Therefore your petitioner prays you will grant him all the depth which may be vacant immediately after the said forty arpents." It seems to me, if we give the petition its utmost scope, it only asks for the vacant land to reach the cypress trees, leaving it to be inferred from the representation that the trees were about a league and a half distant from the front. It is difficult to appreciate the reasoning which seeks to expand this distance to nineteen miles on one of the lines, and to fourteen on the other.

That the practice of cutting timber upon the back lands for the purposes aforesaid was permitted by the Spanish authorities, is no longer a subject of dispute, though it has been substantially settled that it gave the parties no rights in the soil, which would seem to be self-evident. Even if the representation in regard to the distance of the cypress trees from the front could be relied on, the reference to them is too vague and general to afford any safe criterion, upon which to rely in the decision of the main question involved in the case; and the positions assumed by the claimants, and the course of the argument on their part, seem to admit the correctness of the conclusion. The cypress trees are not referred to in the petition as a boundary, nor are they relied on as such; and yet they are spoken of as standing in the rear of the vacant depth to which the descriptive recitals relate. The recital which represents that the front had been cleared out upwards of a league needs confirmation, and cannot well be reconciled with the operations in the field, if it be admitted that the cypress constituted the principal growth, which does not appear to be denied. The surveyor found it necessary to cut a road through the woods, in order to run the course one half that distance, rendering it apparent that the petition had been prepared without any precise knowledge of distances, or of the actual state of things on the land. No one probably would contend that the petition alone could furnish any satisfactory means by which to delineate any well-defined tract with legal certainty and precision; and yet, when the whole proceedings are carefully examined, it will be found that there is nothing in the title papers to sustain the views of the claimants, except what appears in that memorial. There can be no doubt that Unzaga, in issuing the order to the surveyor, had reference to the recital of the petition, knowing, as undoubtedly he

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did, that the public interest would be protected by the direction which he gave to set and mark the boundaries; and that the ultimate rights to be acquired by the petitioner would depend upon the approval of the survey, and the final decree or grant.

The next step in the order of the proceedings was the survey and location, which are admitted to have terminated at forty-two arpents in the depth. The general phraseology in regard to the place where the survey had been made, was incorporated into the preamble of the final decree, as descriptive of the proceedings upon which it was based; but the force and effect of the decree, or grant, was carefully restricted to the operations of Andry in the field, as they appeared in his official certificate of survey. It is clear, therefore, not only that the parties themselves did not regard the descriptive words in the petition as prescribing the boundaries of the grant, but it is equally so that the description itself is too vague and uncertain to afford the necessary means of fixing a definite and certain location upon the land, and furnishes no reason whatever to support the present views of the claimants. If we depart from the survey and location, there does not appear to be any solid legal ground upon which to stand. Shall we stop when one of the side lines reach an elder grant? Shall they be continued to the cypress trees; and if so, where is that point? Shall they be prolonged into that growth; and if so, how far? Shall we stop at the first, second, or third considerable water-course? or shall the tract embrace all the residue of the domains of the crown within the claimed lines? The counsel contend that there is no legal resting place, until we reach the Amite and the lake. They are understood to insist that all the intermediate suggestions, as to the depth of the legal title, between the front tract and the rear boundary of the claim, rest in extreme uncertainty; and in that I agree. And as for the boundary claimed, I find nothing to support it, either in the title papers, or in any reference which has been made to the laws, usages, and customs of the Spanish government.

Separate the grant from the survey and location upon which it is founded, and it is clear to my mind that it would fall within the principle laid down by the Supreme Court in the case of the United States *vs.* King *et. al.*, (3 How., 786.) In that case a certificate of survey was produced, but on the evidence reported to the court, it was decided to be antedated and fraudulent. After having disposed of that point, Chief Justice Taney, in speaking for the court, says:

"Regarding the case in this point of view, the right of the defendant in error must stand altogether upon the instrument executed in 1795 and in 1797 by the Baron de Carondelet; and it has not the aid of any authentic survey to ascertain and fix the limits of the land, and to determine its location. The instruments themselves contain no lines or boundaries whereby any definite and specific parcel of land was severed from the public domain; and it has been settled by repeated decisions in this court, and in cases, too, where the instrument contained clear words of grant, that if the description was vague and indefinite, as in the case before us, and there was no official survey to give it a certain location, it could create no right of private property in any particular parcel of land which could be maintained in a court

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of justice. It was so held in the cases reported in 15 Peters, 184, 215, 275, 319; and in 16 Peters, 159, 160. After such repeated decisions upon the subject, all affirming the same doctrine, the question cannot be considered as an open one in this court. Putting aside, therefore, and rejecting the certificate of Trudeau, for the reasons before stated, the instruments in question, even if they could be construed as grants, conveyed no title to the Marquis de Maison Rouge for the land in question, and, consequently, the defendants in error can derive none from him. The land claimed was not severed from the public domain by the Spanish authorities, and set apart as private property, and, consequently, it passed to the United States by the treaty which ceded to them all the public and unappropriated lands."

It is not proposed to refer to other decisions, asserting the same principle, to sustain the authority of this case, believing that it is sufficient that the highest court in the United States has declared that the proposition is no longer open to dispute. If the principle of that decision be admitted, the conclusion is irresistible, that the parties, in order to sustain the legal title, must fall back upon the survey and location, or abandon the issue, unless their rights can be upheld to the full extent of the claim upon the descriptive words. That the descriptive words, in the connection in which they stand, are not sufficiently comprehensive to effect that object, seems to be manifest; and if they were, that they are too vague and indefinite to afford any safe reliance I entertain no doubt, whether they be tested by the rules of the common law, or by any other rules which have been recognized and approved by the courts of the United States. These several premises bring me again to the question, can the survey and location, thus clearly ascertained and established, be expanded beyond its own limits, while it remains uncontradicted by a single fact or circumstance in the case? I think not. No case has been produced to sustain any such principle, and I think none can be.

There is nothing disclosed in the ancient conveyances calculated, in the least degree, to relieve these parties from the present position of the case. The one most relied on is that of the judicial sale, which, when traced to its final consummation, results in terms more vague and indefinite, if possible, than the original grant itself, when considered without the survey and location. The description of a tract of land, giving "the depth which could be found," is so manifestly void as not to deserve a moment's consideration. The argument, therefore, as to the recognition of the extent of the claim, rests for its foundation upon the declaration in the will of St. Maxent, and the proceedings on the *ex parte* petition of Marigny, and the newspaper advertisement. These, I think, are greatly overbalanced by the terms of the final act of sale, which is the legal test to apply to the proceedings.

Of all the conveyances laid before the commissioners, one only mentions the Amite as the rear boundary of the claim, and that was the deed of William Conway to Daniel Clarke, executed on the 11th June, 1805, more than two years after the treaty of cession. The two conveyances of Maurice Conway, the original grantee, to Patrick Conway, in 1785, and to William Conway, in 1786, describe the depth "according to the title," without furnishing any additional guide to measure

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its extent. The other titles are equally indefinite and uncertain in the language employed in the description of the depth, giving it "as the depth which can be found," or "as the depth according to the title," Even Marrener, who, according to the certificate of Lafon, surveyed a part of the land, and who acquired a portion of it a short time before the claim was presented to the board, under the deed of Maurice Conway to Patrick Conway, as appears by his conveyance to Daniel Clarke, in 1805, describes the tract conveyed, "with the depth according to the title of concession delivered by the late government to the late Maurice Conway." The other three title papers mentioned in the statement—Maurice Conway to Oliver Pollock, and the mortgages by William Conway to Pollock and Joyce, were not produced before the commissioners, and do not appear to have been relied on at that time to make out the title. These are the only conveyances in the case, that I have found, which contain the description, "with the depth as far as the lake." Taken as a whole, I must conclude that any presumption to be drawn from this source is greatly against the views of the claimants.

It is further contended that the claim was fully recognized by the act of Governor Claiborne, in issuing the order upon the petition of Donaldson and others, in pursuance of an authority conferred upon him, as it is alleged, under the second section of the aforesaid act of Congress, approved October 31, 1803, and that it was confirmed to its full extent by the board of commissioners who passed upon the evidences of title under the act of 1805.

The first proposition evidently fails upon the proofs exhibited, even if we admit the authority under which it is assumed that the proceedings referred to were instituted and perfected. It has already appeared in the statement of the case that no survey was actually made by Lafon in pursuance of that order, and it follows, as a necessary consequence, that none could be certified to affect the public interest, or to enlarge the rights of the claimants. The petitioners do not ask, in their petition, for any expansion of the rights which they had previously acquired under the government of Spain; and by no just mode of reasoning can it be maintained that Governor Claiborne intended to assume jurisdiction over any such question. But, unfortunately for the argument, even if the proceedings had been such as is supposed, the authority upon which they repose cannot be sustained. Whatever authority Governor Claiborne possessed, by virtue of his commission, was derived from the Constitution and laws of the United States, to which alone we can look as the source to uphold his acts. Congress has the exclusive power, under the Constitution, to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States. The act under which he was appointed vested no authority in him over the public domain acquired by the treaty of cession. He could neither make a grant, or define the limits of one previously made, or perform any act to confer any right to the soil, not already complete and vested. In a word, he possessed no power to dispose of any portion of the public lands thus acquired, or to make any rule or regulation respecting the same. The act of Congress under which he was appointed merely provides that "all the military, civil, and judicial powers exercised by the officers

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of the old government shall be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion." These powers were temporary, and were to be exercised in such manner as the President should direct; and the directions of Mr. Jefferson are to be found in the commission which he issued to Mr. Claiborne on the same day the act was passed. He gave him all the powers and authority which had been exercised by the former governors and intendants, with the following proviso, which, it seems to me, presents a full answer to the first proposition: *Provided*, That he should have no power or authority "to grant or confirm to any person or persons whatsoever any title or claims to land within the same."

It is clear, therefore, that Governor Claiborne could do no act, or authorize any to be done, which can be regarded as a recognition of the claim by the United States, in regard to its validity or extent. It thus appears, not only that no power was conferred to recognize any such claims, but that the exercise of any such authority was expressly forbidden. Whatever was done to recognize the claim under Governor Claiborne is utterly void, and of no effect. It was due to the claimants to answer the proposition as made; but, in so doing, it is by no means intended to admit that the acts of Governor Claiborne are obnoxious to the charge which the answer to the proposition may seem to imply. It does not appear, from the proofs, that he claimed the power or attempted its exercise. In the order issued by him, which constitutes the only act upon the subject that he performed, he merely says: "The proprietors of land adjoining the tract within mentioned *are requested* to show their respective boundaries, and the commandant of the district, if necessary, will extend the surveyor his protection." He gave no directions in regard to the survey, nor did he approve the certificates or plats after they were made by Lafon. There is certainly no recognition of the claim in that order, nor anything inconsistent with the power conferred to protect the inhabitants in the enjoyment of their property. Moreover, the wise policy adopted by Mr. Jefferson, in withholding all power from Governor Claiborne to grant lands or confirm titles, was subsequently approved and substantially enacted by Congress in the act passed 26th March, 1804. It is entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof." (1 Land Laws, 112.) The act did not take effect till the first day of October, 1804, and by one of its provisions the act of 1803 was continued to that time. The plats and certificates of survey on the claim of Donaldson and Scott, and the claim of Clarke, were executed subsequent to the passage of that law. In those certificates Lafon alleges himself as acting under an authority derived from Governor Claiborne. Before the execution of those certificates all such interference with the public domain had been expressly interdicted by Congress, as appears by the *fourth* section of the act of 1804, which provides "that the governor and legislative council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with claims to lands within the said Territory." And the *fourteenth* section

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imposed penalties on any citizen of the United States, or other person, who should survey, or attempt to survey, or to designate boundaries to any portion of those lands belonging to the United States. The certificates of Lafon are dated subsequent to the time when this law took effect, and were clearly made in violation of its provisions.

The certificate of Lafon in the case of the Conway tract is equally discredited, and alike unauthorized and insufficient for the purpose for which it is introduced. In that case he describes himself as a deputy surveyor, under the surveyor general of the United States south of Tennessee. The powers vested by law in the surveyor general south of Tennessee were extended over the *public lands* to which the Indian title had been, or should be, extinguished, within the Territory of Orleans, by the act of 2d March, 1805, (1 Land Laws, 127,) as appears by its *seventh* section. This power, however, by express words, related to the *public lands, and not* to private surveys.

The act authorizing private surveys to be made by the surveyor general in such cases as the commissioners should think necessary, was not passed till the 28th February, 1806, eight days after the date of Lafon's certificate in that case. It is manifest that the doings of Lafon can derive no aid from that law, for the obvious reason that the certificate bears date prior to its passage.

It becomes important to inquire whether, in any view of the case, these plats can be considered as constituting a compliance with the act of 1805. By the *fourth* section of that act, it is declared that any person claiming lands under any legal French or Spanish grant *might*, and any person claiming under any incomplete title *should*, deliver a notice to the register of the land office, or recorder of land titles within whose district the land may be, stating the nature and extent of his claim, together with a plat of the tract or tracts claimed, and should also deliver every grant, order of survey, deed, conveyance, or other written evidence of his claim, for the purpose of having it recorded. "*Provided, however*, that where lands are claimed by virtue of a complete French or Spanish grant, it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent, together with the warrant or order of survey, *and the plat;* but all the other conveyances or deeds shall be deposited with the register or recorder, to be by them laid before the commissioners when they shall take the claims into consideration."

The plats of the surveys, which by the act of 1805 were directed to be laid before the commissioners, were the original plats executed under the French or Spanish authorities, as is clear from the language of the act. But if there were any doubt on this point, it would be removed by a reference to the third section of the act of 1806, (1 Land Laws, 132,) which repeals so much of the act of 1805 "as makes it the duty of every claimant to lands within the territory of Louisiana to deliver to the recorder of land titles a plat of the tract or tracts, * * so far as relates to claimants whose tracts had not been surveyed by the proper officer under the Spanish government, prior to the 20th December, 1803." The language of the act, and the construction thus placed upon it by Congress, render it obvious to my mind, that the certificates and plats of Lafon do not constitute a compliance with the

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requirements of the act of 1805, even if they had been executed in pursuance of a lawful authority, and had been based upon actual operations in the field. The act of 1805 relates in express terms, certainly by necessary implication, to the French or Spanish surveys. These plats did not emanate from either of those sources, as is manifest from their dates; but were such as had been executed by Lafon, under the circumstances before named, after the United States had acquired jurisdiction over the territory, and therefore do not fall within the letter or the intent of that act.

That this claim has not been recognized by the executive department since the period of which I have been speaking, till the patents were issued, is so apparent as to render comment, to enforce the conclusion, in a great degree, unnecessary. It had been steadily resisted by the General Land Office from the first moment when it was presented to Mr. Graham, in 1829, and never received the sanction of the head of that bureau. The opinion given in favor of the claim by one of the solicitors stands alone, and was never approved by the head of the department. Until the events had taken place which gave rise to this investigation, no Secretary of the Treasury had deemed it within the scope of his authority to confirm the claim, or to decide upon its limits. It had been twice referred to my predecessors, neither of whom found it necessary to give an official opinion upon the main questions in dispute. They were evidently under advisement before Mr. Legaré, and from the inquiries propounded by him to Mr. Blake, we learn what some of the points were which he had under consideration.

In view of all the circumstances exhibited in the statement of the case on this point, prior to the issuing of the patents, I am of opinion that they furnish no ground whatever on which to declare or to presume a recognition of the claim by the United States.

But had the commissioners authority, under the act of the 2d March, 1805, to enlarge the rights of the parties acquired under the former government, or to recognize and confirm the grant to the extent claimed? I think not. The act under which these adjudications were made was entitled, "An act for ascertaining and adjusting the titles and claims to lands within the territory of Orleans and the district of Lousiana." (1 Land Laws, 122.) The *first* and *second* sections provide that the titles of parties in possession under any duly registered warrant or order of survey, or by permission of the proper Spanish officer, and in conformity with the laws, usages, and customs of the Spanish government, shall be confirmed. The *third* section creates two land districts in the territory of Orleans, and makes provision for the appointment of a register in each, and also for the appointment of a recorder of land titles in the district of Louisiana. The *fourth* section is the one above cited, to which I again refer. It makes provision for two classes of claims:

1. Grants and incomplete titles bearing date subsequent to the 1st day of October, 1800, and the claims provided for in first two sections.

2. Complete grants, claimed by virtue of any legal French or Spanish grant, made and completed before the 1st October, 1800.

It only becomes necessary to consider so much of the section as relates to the rights of those claiming under the second proposition.

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If they saw fit to exercise the right, they were permitted, at any time before the 1st day of March, 1806, to deliver to the register or recorder of land titles within whose district the land may lie, a notice in writing, stating the nature and extent of their claims, together with a plat or plats of the lands claimed. If they decided to exercise the right, they were required, on or before the day on which they delivered the notice and plat, also to deliver to the said register or recorder all the written evidence of their claim, and it is directed that it "shall be recorded." The act, however, declares in the proviso, before noticed, that it shall not be necessary for claimants to complete French or Spanish grants to have any other evidence of such claims recorded, except the original grant or patent, together with the warrant or order of survey and the plat. All the other conveyances or deeds were required to be deposited with the register or recorder, to be laid before the commissioners, "when they shall take the claim into consideration."

The fifth section provides for the appointment of two persons in each district who should, together with the register, "be commissioners for the purpose of ascertaining, within their respective districts, the rights of persons claiming under any French or Spanish grant as aforesaid, or under the two first sections of this act." It further enacts, that "each board, or a majority of each board, shall, in their respective districts, have power to hear and decide in a summary manner all matters respecting such claims, * * * and to decide in a summary way, according to justice and equity, on all claims filed with the register or recorder, in conformity with the provisions of this act, and on all complete French or Spanish grants, the evidence of which, though not thus filed, may be found of record on the public records of such grants; which decisions shall be laid before Congress in the manner hereinafter directed, and be subject to their determination thereon." The same section further directs that two transcripts shall be prepared of the decisions in favor of claimants, one to be transmitted to the Surveyor General, and the other to the Secretary of the Treasury; and that a full report of the claims rejected should also be made to the Secretary of the Treasury, "which reports, together with the transcripts of the decisions of the commissioners in favor of the claimants, shall be laid by the Secretary of the Treasury before Congress at their next ensuing meeting."

No form of expression occurs to me, which, if adopted as a substitute, would add either strength or clearness to the language above cited from the fifth section of the act of 1805, by which Congress reserved to itself the ultimate power of deciding all matters respecting these claims, which had not been concluded by the treaty stipulation to respect private property. The decisions of the commissioners were to be laid before Congress for their determination thereon. There is no proposition clearer to my mind than the one which denies the authority of these commissioners under that law to decide this claim finally as against the United States.

It may be said, however, that the language of the petition indicates that it was the intention of Conway, when he presented it to Unzaga, to obtain a double concession, and that these parties have an equitable

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claim upon Congress to the extent of eighty arpents in the depth, being thirty-eight more than are included in the perfect and complete grant. In certain views of the case there is some force in the suggestion, while in others it would seem to be unfounded. The strength of the suggestion consists in regarding that part of the claim as brought within the policy of previous laws of Congress passed upon the same subject. It presents a question exclusively within the jurisdiction of Congress, and can have no influence in determining any of the questions submitted to me. There would seem to be no reason to doubt that double concessions were granted by the Spanish authorities in some instances to the front proprietors. The first provision in any law of Congress, recognizing any such equitable claim, is to be found in the fifth section of the act of the 21st April, 1806. (1 Land Laws, 138.) It is entitled "An act supplementary to an act entitled 'an act for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans, and the district of Louisiana.'" That provision made it the duty of the commissioners "to inquire into the nature and extent of the claims which arise from a right, or supposed right, to a double or additional concession on the back of grants or concessions heretofore made, * * * and to make a special report thereon to the Secretary of the Treasury, which report shall be by him laid before Congress at their next ensuing session."

That in the opinion of Congress, front proprietors might have some kind of a claim to a back concession, independent of the legal forms of title, is further illustrated by the *fifth* section of the act of the 3d March, 1811, (1 Land Laws, 189,) securing to them certain preëmption rights. It provided that every person who, by virtue of a French or Spanish grant, recognized by the laws of the United States, or under a claim confirmed by the commissioners, owned a tract of land bordering on a river, and not exceeding forty arpents in depth, should be entitled to a preference in becoming the purchaser of the land, adjacent to and back of his own tract, not exceeding forty arpents in depth, nor in quantity that which is contained in his own tract, and three years were allowed for the making of the purchase.

The preëmption right thus secured was continued two years longer by the act of the 11th May, 1820, (1 Land Laws, 330,) and the provision was substantially reënacted by the act of the 15th June, 1832, entitled "An act to authorize the inhabitants of Louisiana to enter the back lands," limiting the time to make the application to three years, (1 Land Laws, 499.) The time thus allowed was further extended by the act of 24th February, 1835, one year from the 15th June, 1835.—(1 Land Laws, 536.)

The first law above named instituted an examination in regard to the nature and extent of the claim, and directed the report of the commissioners to be laid before Congress, which probably led to the subsequent legislation giving the proprietors preëmption rights. None of the legislation to which I have referred regarded these claims as legal rights in the soil which could be enforced in a judicial tribunal. It is very clear that no such supposed right or claim can have any influence in the determination of the extent of the legal title. The commissioners appointed under the act of 1811 gave their views in regard to double

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concessions in the case of Benjamin Babin, cited in the opinion of the Supreme Court in Jourdon *vs.* Barret, (4 How., 181,) where they are stated as follows:

"The claimant has no other foundation for his title to the second depth, than having occupied the front and first depth, and having occasionally supplied himself with timber from this second depth. According to the laws, customs, and usages of the Spanish government, no front proprietor, by any act of his own, could acquire a right to lands further back than the ordinary depth of forty arpents; and although the Spanish government has invariably refused to grant the second depth to any other than the front proprietor, yet nothing short of a grant or warrant of survey from the governor could confer a title or right to the land; wherefore we reject the claim." The court concludes by saying, "we give this as an instance of many similar ones reported."

These are some of the considerations that might be urged before Congress in favor of the equitable claim of these parties to the residue of a back concession.

In further discussing the point, the court say, in that case, that the side lines of back concessions, when granted by the former government, as a general rule, were not permitted to diverge, but proceeded in a direct course from the front, so as to secure equal justice to the front proprietors, to whom alone, it seems, these grants were made.

On the contrary, it might be contended that the great extension of the front, which was effected by the last survey or location, over the previous Indian title, evidently including a large tract which had not been cleared, and the grasping character of the course on the side lines, fully accomplished all the purposes of the petitioner set out in the petition; giving him more than a double concession on the river, and a sufficient quantity of the rear land beyond his previous grant, to meet more conveniently all the objects mentioned in that memorial. It is highly probable that it was these considerations that induced the surveyor to regard it as incumbent on him to terminate the operations in the field at the points so explicitly described in his return. Having made these suggestions, I leave them for the consideration of those who have jurisdiction of the question to which they relate.

This brings me to the second inquiry directed by the joint resolution, which puts in issue the authority assumed by the President, in pursuance of the decision of the Secretary of the Treasury, in the granting of the patents. Two patents were issued, one on the claim of Donaldson and Scott, and the other on the claim of Clarke, and respectively bear date the 22d August, 1844.

To uphold the authority thus assumed, it is contended, in substance, that the claim had been previously confirmed by a law of Congress to its full extent, and that the law confirming it required patents to issue in such cases, and that the patents, being signed by the President and recorder of land titles, were issued in conformity to law. These views are enforced by various considerations, in which it is insisted that the decision of the President thus carried into effect is final and conclusive in the premises, and that the patents issued in pursuance of that determination are wholly removed from all impeachment.

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The first three propositions depend entirely upon the fact whether the assumptions on which they repose can be sustained, and must be determined by the act of Congress to which they refer.

The two last cannot be admitted, unless the acts of the President and of the officers issuing the patents were performed in pursuance of an authority conferred upon them by law. The President, no more than the courts of law, can determine any matter finally, unless the power to do so is derived under the Constitution and laws of the United States.

The power over the public lands is vested by the Constitution exclusively in Congress, and the President has no authority over the subject, except what may be inferred from the general power to see that the laws are faithfully executed, unless it be conferred upon him by an act of Congress; nor can the power, when conferred, be exercised in any other form or in any other mode of proceeding than that which the law prescribes.

This view is too firmly established by the Constitution, as a primary principle in the distribution of its powers, to need any confirmation; and the proposition is too palpable to require any illustration to enforce it. Whether the claim had been confirmed by an act of Congress depends entirely upon the proper construction of the act of the 18th April, 1814, upon which the claimants rely on this point to establish their rights. (1 Land Laws, 247.) It is entitled "an act concerning certificates of confirmation of claims to lands in the State of Louisiana," and it is worthy of special remark, that there is not a word in the act which proposes to confirm any claim whatever.

By the first section it is enacted, "that in all cases where certificates of confirmation to lands, lying in either of the land districts established by law in the State of Louisiana, have been issued agreeably with the provisions of the act, entitled, An act respecting claims to lands in the Territories of Orleans and Louisiana, passed the 3d March, 1807, and which were directed to be filed with the proper register of the land office within twelve months after date, and on claims which are included in the transcript of decisions made in favor of claimants, and transmitted to the Secretary of the Treasury, the said certificates shall, in every case where the lands have not been already surveyed according to law, be, by the said registers, delivered to the principal deputy surveyor of the district, together with the proper descriptions of the tracts to be surveyed, wherein the quantity, locality, and connection, when practicable, with each other, shall be stated, at any time after the expiration of three months from the passage of this act, unless the claimant shall otherwise specially direct." It was also made the duty of the said deputy surveyor south of Tennessee, to survey the land accurately, according to the said certificates of confirmation and description, and make general and particular plats thereof, which he should return to the office of the register, together with the original certificates.

This law, it appears to me, is clear and distinct, and is susceptible of but one interpretation, consistent with its language. It directs, in cases where certificates of confirmation have been issued agreeably with the provisions of the act of 1807, and on claims included in the

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transcript of decisions in favor of claimants transmitted to the Secretary of the Treasury, that the register should deliver the same, with a proper description of the tract to be surveyed, to the surveyor, who should survey the tract according to the said certificate and description, and return plats, together with the original certificates, to the register. And by the second section it is provided, that the register should thereupon issue a patent certificate to the claimant, and transmit the same to the Commissioner of the General Land Office; and if it should appear to him that the certificates had been fairly obtained, and that they corresponded with the transcript transmitted to the Secretary of the Treasury and the plats returned by the surveyor, patents were to be granted. The very first requisite to obtain a patent was, that the certificate of confirmation should have been issued agreeably to the act of 1807, and be in the transcript of favorable decisions previously transmitted to the Secretary of the Treasury. It is by virtue of this provision that it is contended that this claim has been confirmed to its full extent. The construction cannot be sustained. No part of the act proposes to confirm any claim, but merely authorizes, under certain prescribed rules, the issuing of patents in a class of cases specially designated, and for lands which had been previously confirmed under the law of 1807.

This is determined by the words of the act upon which these parties rely, as well as those standing in the same connection, and is rendered still more apparent by that part of the second section which authorized the Commissioner of the General Land Office to determine whether the certificate required from the register, when produced, had been fairly obtained, and whether it corresponded with the transcript transmitted to the Secretary of the Treasury.

The benefits of the act were extended to all cases where certificates of confirmation to land had been issued agreeably to the provisions of the law of 1807. These are the only words of any importance by which to ascertain the first requisite, descriptive of the class of claims previously confirmed, to which the act applied. Let us now transpose the sentence, with a view to collect its meaning, and ascertain the second requisite prescribed by the act when thus transposed. It would read, "in all cases where certificates of confirmation to land have been issued agreeably to the law of 1807, and on claims included in the transcript of decisions made in favor of claimants." This mode of reading the sentence is perfectly consistent with its grammatical construction, and presents the proper connection of the principal words more distinctly to the mind.

It thus appears that the second requisite was, that the claims on which the certificates had issued, should appear in the transcript of favorable decisions which had been transmitted to the Secretary of the Treasury. Then follows the third requisite, which was, that the certificates should be such as the previous law had directed to be filed with the proper register of the land office within the time specified.

The sentence, as transposed, leaving out the words of no importance, and supplying the ellipsis, would read as follows: "In all cases where certificates of confirmation have been issued agreeably with the provisions of the act of 1807, and have been issued on claims which are in-

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cluded in the transcript of decisions in favor of the claimants transmitted to the Secretary of the Treasury, and which certificates were directed to be filed with the proper register of the land office within twelve months after date."

The act was carefully limited to the certificates which had regularly issued agreeably to the law of 1807, and prescribed two important tests by which that fact should be ascertained. It was those certificates *only* which had been issued on claims included in the transcript of decisions made in favor of claimants, and which the law under whose provisions they had been issued by the commissioners directed to be filed with the proper register of the land office within twelve months after date. If the certificate produced was regularly issued, and was one which the previous law directed to be thus filed, and the claim on which it had been issued was embraced in the transcript of favorable decisions, then the law provides that the certificate shall entitle the party to the benefits of the act. The reference to the claim on which it had been issued, and to the direction of the previous law in regard to filing, are descriptive of the certificate mentioned in the preceding part of the sentence, and were evidently introduced as a limitation upon the powers of the officers on whom the execution of the act was devolved. They were intended to guard the public interest against the receipt of certificates not genuine, or irregularly issued without authority of law, and to confine the operation of the act to those which had been regularly issued under the law of 1807; and as the best mode of ascertaining whether they had been so issued, and of guarding against mistake or fraud in regard to the paper produced, it was directed that the claim upon which it was founded should also appear in the transcript of favorable decisions. Congress, in so doing, not only prescribed what should be regarded as a certificate of confirmation regularly issued by the commissioners, but also prescribed the rules by which the paper, when produced as such, should be tested. It must have been in conformity with the act of 1807, and the claim on which it purported to be founded must appear in the transcript of favorable decisions. These directions of law not only constituted a limitation upon the power of the officers charged with the execution of the act, but they became their guide in the performance of the duties assigned to them by its provisions. Whenever any such certificate was presented, and the party holding it demanded the benefits of the act, three questions were first to be settled:

1. Had the certificate been issued agreeably to the law of 1807?
2. Was the claim on which it was based included in said transcript?
3. Was the certificate one which the previous law directed to be filed as aforesaid?

Until these several points were settled in favor of the certificate, no proceedings could legally follow; and if either of them were settled adversely, the party would take nothing by his application. Suppose, for example, that the certificate produced had been regularly issued under the law of 1807, but the claim had been omitted in the transcript of favorable decisions, it is clear that there could have been no authority to grant a patent. On the other hand, suppose the claim to have appeared in the transcript, but no certificate had ever issued, the

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same conclusion follows with absolute certainty. It was only where all the conditions were fulfilled that the authority to issue the patents could be exercised. These views will be confirmed by again referring to the *second* section of the act under consideration. It provides that the surveys, as soon as made, shall be returned to the office of the proper register, together with the original certificates of the commissioners. These certificates were such as had been issued by said commissioners under the *sixth* section of the act of 3d March, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," (1 Land Laws, 153,) by which they were directed to transmit to the Secretary of the Treasury and Surveyor General "transcripts of the final decision made in favor of the claimants" by virtue of that act. And they were also required to "deliver to the party a certificate, stating the circumstances of the case, and that he is entitled to a patent for the tract of land therein designated, which certificate shall be filed with the proper register, or recorder, within twelve months after date." The power to issue certificates of confirmation, conferred by that provision, was vested in the commissioners alone, and is expressly limited to claims included in the "transcripts of final decisions made in favor of claimants" by virtue of that act, employing the identical words subsequently incorporated into the act of 1814, and constituting the phrase in the last-named act upon which the claimants rely. The previous words of the *sixth* section of the act of 1807, in regard to the filing of the certificates, are also incorporated into the act of 1814, showing conclusively that the certificates of confirmation therein mentioned were the certificates which the commissioners had issued under the sixth section of the act of 1807, and that they were issued on the claims which the commissioners were directed to include in the transcripts of favorable decisions.

It only remains to ascertain what were the claims thus finally decided, which the commissioners by that provision were directed to include in the transcript of favorable decisions, and upon which they were authorized to issue the certificates of confirmation, to demonstrate the true meaning of the act of the 18th April, 1814.

This question is answered by the *fourth* section of the act of 1807, which gave the commissioners full powers to decide upon all claims to lands within their respective districts, where the claim was made by a person who was an inhabitant of Louisiana on the 20th December, 1803, "and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or salt spring; which decision of the commissioners, when in favor of the claimants, shall be *final* against the United States, any act of Congress to the contrary notwithstanding." The final jurisdiction of the commissioners is thus carefully limited to a tract of land not exceeding a league square. Their decisions on *such* claims, and such only, were final as against the United States. It was their decisions on such claims which, by the sixth section, they were required to include in the transcript, and transmit to the Secretary of the Treasury and surveyor general; and it was only upon these decisions made in favor of claimants that they were authorized to issue, or ever did issue, certificates of confirmation.

And, by the *eighth* section of the same act, it is enacted that the com-

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missioners should "report to the Secretary of the Treasury their opinions on all the claims to land within their respective districts, which they shall not have finally confirmed by the fourth section of this act. The claims shall, in the said report or reports, be arranged into three general classes, that is to say: *First.* Claims which, in the opinion of the commissioners, ought to be confirmed in conformity with the provisions of the several acts of Congress for ascertaining and adjusting the titles and claims to land within the Territories of Orleans and Louisiana. *Secondly.* Claims which, though not embraced by the provisions of the said acts, ought, nevertheless, in the opinion of the commissioners, to be confirmed in conformity with the laws, usages, and customs of the Spanish government. *Thirdly.* Claims which neither are embraced by the provisions of the said act, nor ought, in the opinion of the commissioners, to be confirmed in conformity with the laws, usages, and customs of the Spanish government. And the said report and reports, being in other respects made in conformity with the forms prescribed according to law by the Secretary of the Treasury, shall by him be laid before Congress, *for their final determination thereon*, in the manner and at the time heretofore prescribed by law for that purpose."

In the last mentioned act we have so clear and distinct an exposition of the class of cases on which the act of the 18th April, 1814, was intended to operate, that it is difficult to perceive how any doubt can arise upon the subject. The commissioners were directed to issue certificates of confirmation to claimants, and to transmit transcripts of their decisions to the Secretary of the Treasury in cases of claims for tracts not exceeding the quantity of acres in a league square, and such decisions, when in favor of the claimants, were final. Nothing can be plainer or more certain than that the act of the 18th April, 1814, was applicable exclusively and solely to the cases in which the commissioners were authorized finally to decide in favor of claimants. The claim of these parties was not within this class; and they, or any of those under whom they claim, never received from the commissioners any certificate of confirmation, for the obvious reason that the commissioners had no power or authority to do or perform any such act in this or any similar case. The class of claims in which that of the claimants was embraced was to be reported to Congress for their final determination, in pursuance of the eighth section of the act of 1807. Congress accordingly did act on these claims, as appears by the act of the 14th April, 1814, and confirmed those founded on *incomplete* titles to the extent of a league square. The claims that had been brought before the board on complete and perfect titles were not confirmed, for the reason, unquestionably, that they required no confirmation from the government of the United States. Such lands had been severed from the domain of the crown of Spain before the treaty of cession, and had become private property, and were alike protected by the law of nations and by the terms of the treaty. These titles, therefore, must stand or fall upon their own merits.

The great error, in the opinion of the Secretary of the Treasury, of the 12th August, 1844, consists in supposing that while the act of the 14th April, 1814, confirmed incomplete titles, that the act of the 18th April, 1814, confirmed those which were perfect and complete.

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It has already appeared that the latter act had reference to another and altogether distinct class of claims, and only directed patents to issue where the decision of the commissioners was made final by the act of 1807, and when they had issued certificates of confirmation under its sixth section. Another manifest error in the opinion consists in regarding the certified copies of the proceedings of the board, procured in 1841, as certificates of confirmation issued by the commissioners under the act of 1807. That these copies were so regarded is strongly corroborated by certain memoranda appearing on the outside of the copies, which are as follows: On the copy relating to the Donaldson and Scott claim is written, "certificate of commissioners, of confirmation, No. 133;" and on the other, relating to the Clarke claim, "confirmation to Daniel Clarke, No. 127." The other principal error consists in separating the two requisites as to the certificates of confirmation, that they should have been issued agreeably to the act of 1807, and be on claims in the transcript of favorable decisions, and in regarding them as applicable to distinct and different classes. The language of the act cannot be made to sustain such a construction, and its true meaning is demonstrated, as it seems to me, by reference to the act under which the certificates were directed to be issued and the transcripts made.

In conclusion, I am of opinion:

1. That the grant to Maurice Conway is a complete and perfect Spanish grant to the extent of forty-two arpents from the river, and no more. That the said grant does not convey any lands beyond that extent, but that the title to the same is vested in the United States.

2. That the patents which have been issued in the case of the Donaldson and Scott claim, and the Clark claim, were so issued without authority of law, and are therefore void and of no effect.

I have the honor to be, very respectfully, sir, your obedient servant,

NATHAN CLIFFORD.

The PRESIDENT OF THE UNITED STATES.

STATEMENT OF LOUIS JANNIN.

I. *Has Congress the constitutional power to repeal an act confirming a Spanish grant?*

II. *If Congress had that power, and thought proper to exercise it in the case of the Houmas claim, that claim should be immediately reconfirmed, as it is good and valid to the full extent of the land claimed, and Congress is by law the only competent tribunal.*

These questions arise upon the petition of certain settlers on the Houmas grant in Louisiana, and upon an adverse protest and petition of the owners of the grant.

The second is narrowed down by the uniform action of the government officials to the construction of a few words in the grant, describing its extent.

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If the first question is decided in the negative, the decision of the second question becomes unnecessary. The first is probably the only real question in the case, and it will therefore be examined at length.

It is neither intended nor necessary to submit an original disquisition on this question. The attributes and limits of the constitutional powers of the general and State governments have been thoroughly investigated by the greatest judicial minds in the country. We simply propose to submit copious extracts from their decisions, classed under appropriate heads. But it is, in the first place, necessary to explain how these questions arise.

Statement of the case.

Soon after the purchase of Louisiana, Congress passed an act "for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and district of Louisiana," which was approved on the 2d of March, 1805.—(1 Land Laws, 122.)

This act required the claimants to submit the evidence of their titles to a board of commissioners, appointed under the act. The commissioners were directed "*to decide, in a summary way, according to justice and equity, on all claims filed,* and *their decisions were to be laid before Congress, and to be subject to their determination thereon.*"

The land claim in Louisiana known by the name of the "Houmas" claim, from an Indian tribe which had originally owned and sold it, was then owned in three divided portions, by William Conway, Daniel Clarke, and Donaldson and Scott. All three filed their claims with the board of commissioners, which, on the 3d and 10th of March, 1806, confirmed them unanimously. These claims are designated by numbers 125, 127, and 133, in the report of the commissioners, which was submitted to Congress on the 9th of January, 1812, by the Secretary of the Treasury.—(State Papers, Pub. Lands, by D. Green, vol. 2, p. 287.)

The final determination of Congress remained suspended until the passage of the act of June 2, 1858, (11 Stat. at Large, 294,) by the second section of which all claims favorably reported on in the above-mentioned report were confirmed, "saving and reserving, however, to all adverse claimants the right to assert the validity of their claims in a court or courts of justice."

The most valuable part of the Houmas claim fronts on the Mississippi river, and has been since 1774, and now is, in the actual possession of the owners of the claim, and cultivated by them exclusively. But the claim, as confirmed, extends in the rear to the Amite river and Lake Maurepas; and though the claimants always had the legal possession of it, and paid taxes on it, a number of persons have settled on the back land. At one time entries were permitted to be made on that part of the claim, in violation of the act of March 3, 1811, section 6, which reserves from sale all lands to which a claim had been regularly filed. But in 1844 they were all set aside on account of their interference with the Houmas claim, the purchase-money was ordered to be refunded, and in 121 cases it was actually refunded.

These settlers, not content with the provision in the confirmatory

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act, which saves the rights of adverse claimants, now petition Congress either to reject the Houmas claim in toto, or to repeal the confirmatory act, and to leave the parties where they were before the passage of that act. It has also been suggested that Congress might pass a bill authorizing the Houmas claimants to sue the United States for the confirmation of their claim. But that also presupposes that the confirmatory act was first repealed.

The owners of the Houmas claim protest against the adoption of any of these propositions, and, indeed, against any action of Congress which can in the least affect that claim. That claim is now confirmed; that confirmation is a vested right, and beyond the reach of Congress. For this reason, they submit that the joint resolution of March 3, 1859, which suspends the action of the Executive upon their claim, should be repealed. It is a cloud upon their title, may mislead others, and seems to keep in suspense what has been finally settled, and cannot be unsettled by Congress.

Thus, we are brought to the consideration of the question, whether Congress has the constitutional power to repeal the act by which our claim was confirmed?

Under this head we shall show that—

1. A confirmation of a Spanish grant by act of Congress is equivalent to a legislative grant. It is a complete title, a legal title, and a vested right, with or without a patent.

2. As soon as the Houmas claim was confirmed, all power of the general government over it as property ceased, and vested in the State. Any interference of Congress thereafter would be an unconstitutional infringement of the rights of the State of Louisiana.

3. The government of the United States being one of limited powers, the right now claimed for Congress to repeal the confirmatory act does not exist, unless it is expressly warranted by the Constitution.

4. Any measure impairing a preëxisting right of property is a judicial and not a legislative act, and when it destroys vested rights, is contrary to the fundamental principles of government.

5. The power claimed for Congress is unconstitutional, because it would take our property "without due *process of law.*"

6. And because it would be taking *private property for public use, without just compensation.*

7. Application of these principles to the case of the confirmation of the Houmas claim, and equities of the case.

I. A confirmation of a Spanish grant by act of Congress is equivalent to a legislative grant. It is a complete title, a legal title, and a vested right, with or without a patent. To persons familiar with the adjudications of the Supreme Court of the United States on Spanish land titles, this is a self-evident proposition. To others it will be made clear by the following authorities:

In the case of Grignon's Lessee *vs.* Astor, 2 How., 319. Pierre Grignon had a land claim in Michigan confirmed by an act of February 21, 1823, (3 Stat. at Large, 724,) which provided that on all the claims confirmed by the act patents should issue. Pierre Grignon died in March, 1823. The land was sold on the petition of the administrator of the estate, under an order of court of 1826. The patent was issued

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in 1829 to Pierre Grignon's heirs. The plaintiffs claimed the property under the heirs-at-law; the defendants under the administrator's sale. Upon this state of facts, the court say, (2 How., 344:) "It has been contended by the plaintiff's counsel that the sale in the present case is not valid, because Peter Grignon had not such an estate in the premises as could be sold under the order of the county court, it being only an equitable one before the patent issued in 1829; but the title became a legal one by its confirmation by the act of Congress of February, 1823, which was equivalent to a patent. It was higher evidence of title, as it was the grant of the fee which had been in the United States by the government itself, whereas the patent was only the act of its ministerial officers."

Strother *vs.* Lucas, 12 Pet., 454. "That a grant may be made by law as well as a patent pursuant to a law, is undoubted, (6 Cr., 128,) and a confirmation by a law is as fully, to all intents and purposes, a grant, as if it contained in terms a grant *de novo*."

Patton's Lessee *vs.* Easton, 1 Wheat., 487. "The act of assembly vesting lands in the trustees of the town of Nashville is a grant of those lands."

In Sims *vs.* Irvine, 3 Dallas, 456, Chief Justice Ellsworth said: "By these means Sims acquired to the said island a complete, *equitable* title, and one which needed a patent of confirmation to render it a complete legal title. A confirmation of this equitable title, as effectual as that of any patent could have been, was afterwards comprised in the compact between Virginia and Pennsylvania, and in the ratification of the same by the legislative act of the latter."

In Chouteau *vs.* Eckhard, 2 How., 374, the Supreme Court, speaking of the reports of commissioners, says: "On these reports coming before Congress, it acted directly by statute on such titles as were by the legislature considered well-founded and just claims."

Les Bois and Bramell, 4 How., 463. "A confirmation of a French or Spanish claim, either by a board of commissioners under the act of 1807, or by Congress directly, or by the district court, by force of the act of 1824, is a location of land by a law of the United States."

Enfield *vs.* Permint, 8 New Hamp., 515. "A grant of land, by an act of the legislature, vests an actual seizin in the grantee."

"The grant in such a case is a public act, much better calculated to give notoriety to the conveyance than an actual entry upon the land by an agent of the State, or by the grantee. And this notoriety of the grant is, in contemplation of law, equivalent to an actual entry by the grantee."—(8 Cranch, 246, 248; 5 Coke, 94; 3 Green, 441. Hill *vs.* Dyer.)

Enfield *vs.* Day, 11, New Hamp., 528. "A mere grant of land by the government is ordinarily evidence of an actual seizin at the time of the government, and vests such seizin in the grantee."

Bissell *vs.* Penrose, 8 How., 331. "By the confirmation the title became complete."

To the same effect as the above is the case of Doe *vs.* Eslava, (9 How., 447,) in which they are all reviewed.

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II. As soon as this grant was confirmed, all power of the general government over it as property ceased, and vested exclusively in the State. Any interference of Congress thereafter would be an unconstitutional infringement of the rights of the State of Louisiana. This is the doctrine of the leading case of Pollard's lessee *vs.* Hagan *et al.*, 3 How., 221. "The United States never held any municipal sovereignty, jurisdiction of right of soil in and to the territory of which Alabama or any of the new States were formed, except for temporary purposes, and to execute the trusts created by the acts of the Virginia and Georgia legislatures, and the deeds of cession executed by them to the United States, and the trust created by the treaty with the French republic of the 30th of April, 1803, ceding Louisiana." Ibid., p. 222: "The manner in which the new States were to be admitted into the Union, according to the ordinance of 1787, as expressed therein, is as follows: 'And whenever any of the said States shall have sixty thousand free inhabitants therein, such States shall be admitted by its delegates into the Congress of the United States, *on an equal footing with the original States in every respect whatever.*'"

Ib., p. 224: "The object of all the parties to this contract of cession was to convert the land into money for the payment of the debt, and to erect new States over the territory thus ceded; and as soon as these purposes could be accomplished, the power of the United States over these lands as property was to cease."

"Whenever the United States shall have fully executed these trusts, the municipal sovereignty of the new States will be complete, and they and the original States will be upon an equal footing in all respects whatever."

Thus in Louisiana the United States held and still hold the public lands in temporary trust for the State. In practice, all lands in Louisiana were at first considered as public lands, until they were shown to be private property under the acts passed for the adjudication of land claims. As soon as any of these claims were confirmed, and thereby declared to be private, and not public property, they fell exclusively under the municipal government of the State. The protection of the property of the inhabitants of Louisiana, stipulated for in the treaty of cession, terminated with the admission of Louisiana as a State of the Union, because then these inhabitants were upon an equal footing with their brethren in the other States, and enjoyed the protection of, and were amenable to, the State authorities alone. This is the evident inference to be drawn from the decision of Chief Justice Marshall in the case of the city of New Orleans *vs.* de Armas, 9 Pet., 234: "The third article (of the treaty of cession of April 30, 1803) is expressed in these words: 'The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.' No other article of the treaty is supposed to contain any stipulation for the rights of individuals. The article obviously contemplates two objects—one that Louisiana shall be admitted

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into the Union as soon as possible upon an equal footing with the other States, and the other, that till such admission, the inhabitants of the ceded territory shall be protected in the free enjoyment of their liberty, property, and religion. Had any of these rights been violated while this stipulation continued in force, the individual supposing himself to be injured, might have brought his case into this court, under the twenty-fifth section of the judicial act. But this stipulation ceased to operate when Louisiana became a member of the Union, and its inhabitants were 'admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States.' * * * The inhabitants of Louisiana enjoy all the advantges of American citizens, in common with their brethren in their sister States, when their titles are decided by the tribunals of the State."

III. The government of the United States is a government of powers, limited by the Constitution of the United States, and all the rights and powers not expressly delegated to it are reserved by the States. This is a proposition which requires no proof; and hence the question arises whether the power to repeal an act of confirmation—or, in other words, the power to divest private property—has been delegated to Congress? It would be a vain undertaking to look into the Constitution of the United States for the justification of the exercise of such an authority, which is, besides, contrary to the law of nations, and to that feeling of right and wrong which is the basis of all legislation. In other countries it might be necessary to inquire whether the measure contemplated was right or wrong, in an abstract sense. In the United States it is sufficient to ask whether it was expressly authorized by the Constitution? If not justified by the very terms of the Constitution, that power does not exist.

Here, indeed, we might rest the case. But as there exist other conclusive reasons why the course suggested to Congress should not be followed, and as our avowed object is to make it perfectly clear that no argument whatever can be adduced in support of the power claimed for Congress, we shall show that the Constitution of the United States expressly prohibits it. The prohibitions applicable to this case are threefold, namely: 1st. The repeal of a grant is a judicial and not a legislative act, and therefore not within the competency of Congress; 2d. It would be the taking away of our property "without due process of law;" and 3d. It would be taking private property for public use without compensation.

IV. Any measure reative to a preëxisting right of property, whether limiting or defeating it, is a judicial act, and therefore not within the authority of the legislative branch of the government, and when its object is to destroy vested rights, is contrary to the fundamental principles of government. Congress had indeed, in one instance, the power of acting upon our claim, but that was authorized by the treaty of cession, a "supreme law of the land." Congress was bound to ascertain what lands in Louisiana were private property. That once done in regard to a particular claim, Congress could no longer affect it in any

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manner whatever. Whatever could thereafter by possibility be done, in regard to such a claim, must necessarily be of a judicial nature.

However difficult it may be to establish with precision the line of division between legislative and judicial powers, it has uniformly been held that any act influencing private controversies, dispensing with a general law to favor a party, or affecting vested rights, in substance, &c., is not the legitimate exercise of legislative authority, and therefore void.

In Parmele *vs.* Thompson, 7 Hill, 77, the supreme court of New York pointedly said: "The legislature has no right to determine facts touching the rights of individuals."

In Vermont, an act granting an appeal beyond the time allowed by law, was held to be a decree rather than a law, and therefore void.—(Bates *vs.* Kimball, 2 Chip., 77.)

In Maine, it has been decided that the granting by the legislature of a new trial, after the time for appeal was elapsed, is a judicial act, and void.—(Lewis *vs.* Webb, 3 Greenleaf, 326.)

"The right (that is, a patent upon a New Madrid location) thus made complete, could not have been affected by any subsequent act of Congress."—(Mills *vs.* Stoddard, 8 How., 365.)

In Duncan *vs.* Bean, 2 Nott and McCord, 405, the court says:

"It is certain that where a grant has once passed the great seal, it cannot be revoked, except by some legal proceeding, and this for the most obvious reason. The party may have it in his power to show a compliance with the condition or a release from the performance of it. (6 Comyn's Digest, 63; letter D, 70; 5 Com., 274, title Patent.) Despotic indeed would be the government which should exercise the power of revoking at will all grants of land which it may have made to individuals, or of determining, without the intervention of a judicial tribunal, where there was ground for a revocation. The usual mode in England is by *scire facias* in equity, or by process on the law side of the exchequer court. But if it were consistent with the principles of justice, that the sovereign power should of itself determine when a grant should be revoked, a second grant of land in this State should not be evidence of such revocation," &c.

Vanhorn *vs.* Dorrance, 2 Dallas, 310: "Men have a sense of property. Property is necessary to their subsistence, and correspondent to their natural wants and desires; its security was one of the objects that induced them to unite in society. No man would become a member of a community in which he could not enjoy the honest fruits of his labor and industry. * * * * The English history does not furnish an instance of this kind. The Parliament, with all their boasted omnipotence, never committed such an outrage on private property; and if they had, it would have served only to display the dangerous nature of unlimited authority; it would have been an exercise of power, and not of right. Such an act would be a monster in legislation, and shock all mankind."

Ibid., page 311: "It is immaterial to the State in which of its citizens the land is vested; but it is of primary importance that, when vested, it should be secured, and the proprietor protected in the enjoyment of it."

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Sharswood's note to Blackstone, vol. 2, page 346:

"In the United States, the bills of rights contained in the various State constitutions impose real and effective limitations upon legislatures, and an act may be declared void, not because it is against reason, but because it is in violation of the constitution. In most, if not all, these bills of rights, is contained the provision that no man can be deprived of his property, unless by the judgment of his peers, or the law of the land; and by 'law of the land' is meant some general law establishing a rule for the community at large. Property can only be taken for a public use, and that upon compensation made. It is not competent to the legislature to take the property of A and give it to B. (Hoke *vs.* Henderson, 4 Devereux, N. C. Rep., 1; Jones's Heirs *vs.* Perry and al., 16 Fayer, 59; in the matter of John and Cherry streets, 19 Wend., 659; Wilkinson *vs.* Leland and al., 2 Pet., 627; Norman *vs.* Heist, 5 W. & S., 171.) Private acts of the legislature are, however, frequently obtained to enable trustees to convert real into personal property, or in general, to change investments; and such acts have been held constitutional and valid. (Norris *vs.* Clymer, 2 Ban., 277.) In these cases a change of the subject-matter, for the benefit of all interested, is effected, but no change in the right or title of any of the parties. Whenever such a change has been attempted, the act has been declared unconstitutional and void."—(Norman *vs.* Heist, 5 W. & S., 171; Bumberger *vs.* Clippinger, 5 W. & S., 311; Rogers *vs.* Smith, 4 Barr., 93; Brown *vs.* Hummel, 6 Barr., 86.)

United States *vs.* Arredondo, 6 Pet., 738: "If land is granted by a State, its legislative power is incompetent to annul the grant, and grant the land to another. Such law is void. Fletcher *vs.* Peck, 6 Cr., 87."

But the case which probably exhibits in the most distinct manner the nature and limits of the legislative power, is the case of Taylor *vs.* Porter, 4 Hill, 140, decided by Judge Bronson. This case involved the validity of the statutory provision of New York, authorizing a private road to be laid out over the lands of a person without his consent.

The constitution of New York, which was in force when this controversy arose, unlike the present constitution of that State, the Constitution of the United States, and the constitutions of nearly all the States, did not contain the provision that private property should not be taken for public use without compensation. The court admitted the right to take private property for public use, making just compensation therefor, and then said:

"There is no provision in the constitution that just compensation shall be made to the owner when his property is taken for private purposes; and if the power exists to take the property of one man and transfer it to another, it may be exercised without any reference to compensation. The power of making bargains for individuals has not been delegated to any branch of the government; and if the title of A can be, without his fault, transferred to B, it may as well be done without as with a consideration. This view of the question is sufficient to put us upon the inquiry, where can the power be found to pass such a law as that here under consideration? It is not to be presumed that

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such a power exists, and those who set it up should tell us where it may be found. Under our form of government, the legislature is not supreme; it is only one of the organs of that absolute sovereignty which resides in the whole body of the people. Like other departments of government, it can only exercise such powers as have been delegated to it, and when it steps beyond that boundary, its acts, like those of the most humble magistrate in the State who transcends his jurisdiction, are utterly void. Where, then, shall we find a delegation of power to take the property of A and give it to B, either with or without compensation? Only one clause in the constitution can be cited in support of the power, and that is the first section of the first article, where the people have declared that '*the legislative power of the State shall be vested in a senate and assembly.*' It is readily admitted that the two houses, subject only to the qualified negative of the governor, possess all the legislative power of this State; but the question immediately presents itself, *what is that legislative power*, and how far does it extend? Does it reach the life, liberty, or property of the citizen who is not charged with a transgression of the laws, and when the sacrifice is not demanded by a just regard for the public welfare. * * * * The security of life, liberty, and property lies at the foundation of the social compact; and to say that this grant of 'legislative power' includes the right to attack private property, is equivalent to saying that the people have delegated to their servants the power of defeating one of the great ends for which governments were established. If there was not one word of qualification in the whole instrument, I should feel great difficulty in bringing my mind to the conclusion that the clause under consideration had clothed the legislature with despotic power; and such is the extent of their authority, if they can take the property of A, either with or without compensation, and give it to B. The 'legislative power of this State' does not reach to such an unwarrantable extent. Neither life, liberty, nor property, except when forfeited by crime, or when the latter is taken for public use, falls within the scope of the power."

The reasoning of Chief Justice Marshall, in the great case of Fletcher *vs.* Peck, (6 Cr., 87,) which arose under very peculiar circumstances, throws great light upon the subject under consideration. We submit the following extracts:

Page 132. "The legislature of Georgia was a party to this transaction; and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a mere act of power which must find its vindication in a train of reasoning not often heard in courts of justice."

Page 134. "If the legislature felt itself absolved from those rules of property, which are common to all citizens of the United States, and from those principles of equity which are acknowledged in all our courts, its act is to be supported by its power alone, and the same power may divest any other individual of his lands, if it shall be the will of the legislature so to exact it."

Ibid. "Although such powerful objections to a legislative grant, as are alleged against this, may not again exist, yet the principle on which alone this rescinding act is to be supported may be applied to every

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case to which it shall be the will of any legislature to apply it. The principle is this: that a legislature may, by its own act, divest the vested estate of any man whatever, for reasons which shall, by itself, be deemed sufficient."

Page 136. "To the legislature all legislative power is granted; but the question, whether the act of transferring the property of an individual to the public, be in the nature of the legislative power, is well worthy of serious reflection.

"It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of tho e rules to individuals in society, would seem to be the duty of other departments."

Ibid. "A contract executed is one in which the object of contract is performed; and this, says Blackstone, differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. A party is therefore always estopped by its own grant."

Page 138. (By the Constitution of the United States:) "No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts."

"A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both."

In this case the judgment of the court was unanimous. But Mr. Justice Johnson entertained, on two points, an opinion different from the court, and wrote a separate opinion. In this he said, (6 Cr., 143:) "I do not hesitate to declare that a State does not possess the power of revoking its own grants. But I do it on a general principle, or the reason and nature of things; a principle which will impose laws even on the Deity."

"A contrary opinion can only be maintained upon the ground that no existing legislature can abridge the powers of those which will succeed it. To a certain extent this is certainly correct; but the distinction lies between power and interest, the right of jurisdiction and the right of soil.

"The right of jurisdiction is essentially connected to, or rather identified with, the national sovereignty. To part with it is to commit a species of political suicide. In fact, a power to produce its own annihilation is an absurdity in terms. It is a power as utterly incommunicable to a political as to a natural person. But it is not so with the interests or property of a nation. Its possessions nationally are in nowise necessary to its political existence; they are entirely accidental, and may be parted with in every respect similarly to those of the individuals who compose the community. When the legislature have once conveyed their interest or property in any subject to the individual, they have lost all control over it; have nothing to act upon; it has passed from them; is vested in the individual; becomes intimately blended with his existence, as essentially so as the blood that circulates through his system. The government may indeed demand of him the

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one or the other, not because they are not his, but because whatever is his is his country's.

"As to the idea, that the grants of a legislature may be void because the legislature is corrupt, it appears to me to be subject to insuperable difficulties. The acts of the supreme power of a country must be considered pure for the same reason that all sovereign acts must be considered just; because there is no power that can declare them otherwise. The absurdity in this case would have been strikingly perceived, could the party who passed the act of cession have got again into power, and declared themselves pure, and the intermediate legislature corrupt."

V. The power claimed for Congress is further unconstitutional, because it would take our property without *due process of law*.

The fifth article of the amendments to the Constitution provides that "no person shall be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public uses without just compensation."

Due process of law. It is now well settled that these words are equivalent to the phrase, "law of the land," which is found in many State authorities.—(Story on the Constitution, § 1789; Sedgwick on Statutory and Constitutional Law, p. 610.)

We take the following collection and abridgment of cases and authorities from Mr. Sedgwick's work:

Page 434. "This important limitation of legislative power is to be found, I believe, without exception, in the constitutions of all the States of the Union."

Page 507. "Much discussion has taken place in regard to what is meant by the phrase, 'the law of the land.' Perhaps, in most respects, there is nowhere to be met with a better definition of it than is to be found in the argument of Mr. Webster, in the Dartmouth College case. 'By the law of the land is most clearly intended the general law, which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities under the protection of general rules which govern society. Everything which may pass under the form of an enactment is not the law of the land.'"

Ibid., p. 537. "The same doctrine has been declared in a very elaborate case in the State of New York. An act of that State, authorizing private roads to be laid out over the lands of an owner without his consent, provided for the damages to be assessed by a jury of six freeholders, and declare that the road should, when laid out, be for the use of the applicant and his assigns; and in action of trespass the validity of this statutory provision came up for consideration. The constitution of the State, as it then stood, provided 'that no member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land and the judgment of his peers,' (Constitution of 1821, art VII, § 1;) and also, that 'no person shall be deprived of life, liberty, and property, without due process of law.' (Ib., § 7.) After showing that the act worked a transfer of property from one individual without his consent to another, the Supreme Court held that no such legislation was compatible with

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'the law of the land,' nor such a proceeding compatible with 'due process of law.' They said: The words 'by the laws of the land,' as used in the Constitution, do not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the Constitution into mere nonsense. The people would be made to say to the two houses, 'You shall be vested with the legislative power of the State, but no one shall be disfranchised or deprived of any of the rights or privileges of a citizen, unless you pass a statute for the purpose. In other words, you shall not do the wrong unless you choose to do it. * * * The meaning of the section is, that no member of the State shall be disfranchised or deprived of any of his rights and privileges, unless the matter shall be adjudged against him upon trial had according to the course of the common law. It must be ascertained judicially that he has forfeited his privileges, or that some one else has a superior title to the property he possesses, before either of them can be taken from him. It cannot be done by mere legislation.' So of the phrase 'due process of law,' it was said: 'It cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for asserting guilt or determining the title to property. The same measure of protection against legislative encroachment is extended to life, liberty, and property; and if the latter can be taken without a forensic trial and judgment, their is no security for the others. If the legislature can take the property of A and transfer it to B, they can take A himself, or put him to death. But none of these things can be done by mere legislation. There must be due process of law.' (Taylor *vs.* Porter, per Bronson, J., 4 Hill, 140.) In North Carolina and Tennessee the term 'law of the land' has received the same construction.''—(Hoke *vs.* Henderson, 3 Dev., 12; Jones *vs.* Perry, 10 Yerg., 59; see, also, in Iowa, Reed *vs.* Wright, 2 Greene, Iowa, 22; in Texas, James *vs.* Reynolds, 2 Texas, 251; in Pennsylvania, Brown *vs.* Heummel, 6 Ban., 87; and Ervine's appeal, 16 Penn. R., 256; Kinney *vs.* Beverly, 2 Hen. & Munf., 336; Arrowsmith *vs.* Burlingim, 5 McLean R., 498; and Blackwell on Tax Titles, 27, 34.)

Ibid., p. 359. "In New York the subject has been again recently considered in reference to the temperance law. An act passed in 1855, (9th April,) entitled 'An act for the prevention of intemperance, pauperism, and crime, declared substantially that intoxicating liquor should not be sold or kept for sale, except for medical, sacramental, chemical, and mechanical purposes; and a violation of this provision was declared a misdemeanor, punishable by fine and imprisonment.' It was further enacted, that, upon complaint of a violation of this prohibition, liquor illegally kept should be seized; and if found to be kept in violation of the act, or if not claimed, should be adjudged forfeited, and destroyed. Proof of the sale of liquor was to be considered sufficient to sustain an averment of an illegal sale, and proof of delivery to be *prima facie* evidence of sale. No person was to be allowed to maintain an action to recover for any liquor sold or kept by him, unless he could prove that the liquor was lawfully sold or kept within the act; and finally, it was declared that all liquor kept in violation of the act should be deemed a public nuisance.

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"Tonybee and Berberich, having been found guilty of violating the act, appealed to the supreme court, and the act was held to be in conflict with the constitutional provisions above cited. It was considered that the object of the statute was to prohibit the common and ordinary use of property long and familiarly known; that liquor came clearly within the definition of property; that the prohibition of its sale worked a virtual deprivation of property; that to do this by fines, forfeitures, and imprisonment, coupled with a presumption against nuisance, was not due process of law; that the right of protection belonging to the citizen was seriously impaired by requiring him preliminarily to prove that the liquor was lawfully kept; that it was not competent for the legislature to declare any recognized species of property a nuisance; and that the whole act was void, as being an arbitrary interference with the rights of property, guarantied by the Constitution."—(People *vs.* Barberich & Tonybee, 11 How. Pr. R., 289.)

This decision has been affirmed on appeal.—(Wynehamer *vs.* The People, 3 Kernan, 378.)

Page 541. "The vested interest of a husband in a legacy bequeathed to his wife, cannot be altered by subsequent legislation; and the act of 1848, by which it was attempted to act retrospectively, is unconstitutional, on the ground that it takes away property without *due process of law.*"—(Westervelt *vs.* Gregg, 2 Kernan, 202.)

Page 610. "So also in Rhode Island, on the first circuit, Mr. Justice Curtis has decided, under the constitution of that State, that the phrase 'law of the land' is equivalent to 'due process of law,' and that it is necessarily implied, and included the right to answer to and contest the charge, and the consequent right to be discharged from it, unless it be proved; and when a law of the State of Rhode Island, passed in 1852, designed to prevent the sale of intoxicating liquors, required the accused, before he could answer to or contest the charge, to give security in the sum of two hundred dollars, with sureties, to pay all fees and costs adjudged against him, it was held that this provision conflicted with the constitution, and rendered the law void. (Greene *vs.* Briggs, 1 Curtis, 311.) In 1853, the State of Rhode Island passed another liquor law, which was also declared void for a similar reason. (Greene *vs.* James, 2 Curtis, 189.) To the same effect is the decision in Webster *vs.* Cooper."—(14 How., 488.)

VI. The repeal of the confirmatory act would be taking private property for public use, without compensation. This is likewise prohibited by the fifth article of the amendments to the Constitution.

Nor would there be the least difference in principle, if, instead of annulling the grant in toto, Congress were to declare that the Houmas claimants should be authorized to sue the United States, as if no confirmation had taken place. This would be a declaration by Congress, that they mean to treat and consider as public property, what they previously had declared to be private property. If such a course did not take away the land itself, it would take away the confirmation, which is also a right, a property, and an immunity from further vexation. Thus, if a court took a more contracted view of the meaning of the grant than the commissioner and Congress had done before, the claimants might lose a portion of the land embraced in the confirma-

tion. Such an act would, therefore, at least be an indirect taking of property, which is as unconstitutional as absolute and direct spoliation.

An act of Congress which would take private property without compensation, whether for public or private use, would not be a law, but a mere act of power to which no court would give validity. Such is the tenor of the language of the Supreme Court of the United States in Fletcher *vs.* Peck, (6 Cr., 87.) And, indeed, the authorities we have submitted under the two preceding heads cover this ground entirely, and we therefore dismiss it, referring only to some other authorities, if further examination should be desired.

Bloodgood *vs.* the Mohawk and Hudson R. R. Co., 18 Wend., 59.
Matter of John and Cherry st., 19 Wend., 659.
In the matter of Albany street, 11 Wend., 151.
Varick *vs.* Smith, 5 Paige, 137.
Tonawanda R. R. Co. *vs.* Munger, 5 Denis, 255.
Wallace *vs.* Karlenoweſski, 19 Barb., 118.
Plank Road Co. *vs* Thomas, 20 Penn. R., 90.

VII. All these principles apply to our case, and show the entire want of power in Congress to do anything in opposition to the confirmation of our claim by the act of 1858.

Legislative assemblies are governed by precedents, and the circumstance that, during the long existence of this government, while Congress must frequently have been importuned by parties whose interests were in conflict with parties who were in possession of rights derived from and vested bv acts of Congress, the national legislature never attempted to interfere, affords strong evidence that the non-existence of such a power never was questioned.*

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*The act of August 4, 1854, the second section of which repeals an act of June 29, 1854, entitled, "An act to aid the Territory of Minnesota in the construction of a railroad therein," is no exception to this rule. The circumstances of that case show very clearly that it does not fall under the principles stated and supported in this argument. On the 4th of March, 1854, the territorial legislature of Minnesota passed an act incorporating the Minnesota and Northwestern Railroad Company, the 8th section of which provided, "that any lands that may be granted to the said Territory to aid in the construction of said railroad shall be, and the same are hereby, granted in fee simple" to the said railroad company. The act of Congress of June 29, 1854, granted to the Territory of Minnesota, for the purpose of aiding in the construction of a railroad, the locality of which was described, every alternate section of land, designated by odd numbers, for six sections in width on each side of said road. But it seems that Congress was informed of the aforesaid act of the territorial legislature in favor of the Minnesota and Northwestern Railroad Company, and intended to exclude that company from the benefit of a donation; for the 3d section of the act of August expressly directed that the said lands should not inure to the benefit of any company heretofore constituted *or* organized. Thus the act was passed; but it appears that by some fraudulent maneuver it read as promulgated, "constituted *and* organized," thus attempting to prevent the exclusion of the Minnesota and Northwestern Railroad Company, which was constituted before the date of the act of Congress, but organized only after that date. This discovery excited the indignation of Congress, and induced the passage of the act of August 4, 1854, which repealed that of June 29, 1854. The company continued to contend that by the former act, in conjunction with the territorial act, they had a vested right to the alternate odd sections along the line of their road.

The matter was brought before the Attorney General and the Secretary of the Interior, and those officials concluded to disregard the claim of the railroad company, and have always done so. This course was justified and vindicated in the letters of the Commissioner of the General Land Office to the Secretary of the Interior, dated November 2, 1855, and June 22, 1857. These letters contain a full and able argument on the whole case. While admitting that the duty of executive officers is restricted to the execution of the laws, they do not confine themselves to this plea. They justify the act of August 4, 1854, by showing that no *vested* right has been divested by it. When the repealing act was passed, the road had not

But if the opponents of the Houmas claim made other and very different demands upon Congress; if they demanded what is clearly within the constitutional power of Congress—though what that would be, cannot easily be imagined, since by the confirmation, the authority of Congress over this claim is terminated—it ought to be refused upon considerations of equity and fairness, peculiar to this case, independently of the merits of the grant, which form the subject of the second part of this argument.

In Menard *vs.* Massey, 8 How., 306, the Supreme Court of the United States says: "By the third article of the treaty by which Louisiana was acquired, and by the laws of nations, the inhabitants of the ceded territory were entitled to be maintained and protected in the free enjoyment of their property."

The United States were under the necessity of ascertaining what was public and what was private property in the country ceded by France, both because they had bound themselves to protect private property until Louisiana shall become a State, (City of New Orleans *vs.* De Armas, 9 Pet., 234, heretofore referred to,) and because they had purchased the public lands which had to be prepared for sale and settlement. They therefore were under the necessity of establishing the rigorous, though unavoidable, presumption, that all lands to which a private right could not be shown, should be considered and treated as public lands. The stringency of this principle was, however, tempered by the prompt establishment of tribunals for the ascertainment and acknowledgment of private claims. The first of these acts was that of March 2, 1805, (1 Land Laws, 122.) The 4th section of this act describes what evidence persons claiming under complete and incomplete French and Spanish grants had to submit to the boards of commissioners. And by the 5th section, these commissioners were "*to decide in a summary way*, according to justice and equity, on all claims filed," and their "decisions were to be laid before Congress in the manner hereinafter directed, and *be subject to their determination thereon.*"

The terms of this act show that its framers were aware that the necessity of the case and the dictates of common justice required that this investigation should be promptly closed, and the apprehensions of the inhabitants be quieted. The commissioners were to decide in a summary way, and it was to be inferred that Congress would act with all practicable expedition. These requirements fell harshly upon the inhabitants who had changed their allegiance. Accustomed to a patriarchal government, which granted laws for the asking, and never disturbed any man's possession, (Morale's regulations, inspired by new-born official zeal and disputes with the governor, are known to have been *brutum fulmen*,) they had often neglected their title papers.

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yet been located, and the land to which the Territory would have been entitled, but for that act, was not yet known or designated. Moreover, the 4th section of the act of June 29, 1854, expressly provides, that "no title shall vest in the said Territory" until certain conditions were complied with, and a compliance with these conditions had not even been commenced when the prospective conditional grant was repealed.

The railroad company was alone a loser by the repeal of that act. The Territory and State of Minnesota afterwards received a greater quantity of land for similar purposes, no longer fettered by its promise to the Minnesota and Northwestern Railroad Company, contained in the act of the territorial legislature of March 4, 1854.

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With much trouble they collected them, and when they submitted them they had a right to hope and expect a prompt answer from the tribunal to which they had been referred.

The United States established their own tribunals in their own cause. It could not be otherwise; but as a just nation, they were bound not to suspend the course of justice indefinitely, and still less to change the tribunals, from motives of expediency hostile to the claimants. These tribunals were the board of commissioners, acting in the first instance, and Congress acting as the appellate tribunal in the last resort. These were special tribunals, and no other authority or court in the country had any jurisdiction in the matter. From the moment the act of March 2, 1805, was passed, the Houmas claimants could not take a single step in opposition to it. Their claims were confirmed by the board of commissioners on the 3d and 10th of March, 1806. The record was not removed into the appellate court, Congress, until the 9th of January, 1812; and but for the promised "final determination" by the act of June 2, 1858, their and all the other claims embraced in that voluminous report, exceeding a league square, would still be undecided. And would it be fair, under these circumstances, to keep them still longer in suspense, even if it could be done constitutionally?

As on this point, in the moral aspect of the case, it is of great importance to show that the tribunals established by Congress for these claims are exclusive of all others, we submit some authorities:

By an act of March 3, 1815, (3 Statutes at Large, 114,) commissioners were appointed to adjudicate on the rights of certain claimants to lands in Mississippi Territory. A decision of this board gave rise to a suit between private individuals, and the Supreme Court of the United States held (Brown *vs.* Jackson, 7 Wheaton, 240,) that as no appeal had been given from the decision of these commissioners, the Supreme Court had no right to review or disturb their decisions made with the authority delegated to them.

By an act of August 3, 1846, (9 Statutes at Large,) the Commissioner of the General Land Office, the Secretary of the Treasury, and the Attorney General were appointed to decide on all cases of suspended entries. In Foley *vs.* Harrison, 15 How., 450, the decision of this board was held final.

To the same effect are the decisions in Elliott *vs.* Peirsol, 1 Pet., 328; Wilcox *vs.* Jackson, 13 Pet., 498; and Cousin *vs.* Blanc's Executor, 19 How., 209.

Hence it follows, that if the claimants had not construed the long silence of Congress as an acquiesence in the decision of the commissioners, if they had set up their claim as plaintiffs in any court of justice, they would have been met by the unanswerable objection, that their claim was pending before a special tribunal, which alone could take cognizance of it, and which had not yet decided on it.

It may be asked, by those unacquainted with the working of this system, whether the Houmas grant, being a complete grant, could not have been established in a court of justice, independently of any confirmation. The 4th section of the act of March 2, 1805, seems to make optional in cases of complete grants, what is absolutely required in

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cases of incomplete titles. But this difference soon vanished in practice, and in reality they all stand upon the same footing. The General Land Office respects no grant whatever that has not been expressly confirmed. Without a confirmation it ignores them; it has no right to confirm or acknowledge them upon its own judgment, and the claims are known to that office only through the confirmations. By the 4th section of the act of April 25, 1814, even complete grants in certain parts of Louisiana were required to be filed, under the penalty that, if not recorded, they should never afterwards be recognized or confirmed, or received as evidence against a title received from the United States. If not confirmed, or at least filed for confirmation, the land office would proceed to the sale of the land, whatever the title may be; and after the land should have been parcelled out among purchasers of small tracts, its ownership would be converted into lawsuits, and its value gone. Hence it is that the reported decisions of the federal courts do not exhibit a single instance of an unconfirmed complete grant as the basis of a suit in a petitory action, or in action of ejectment. That the practice of the General Land Office has been correctly stated, will appear from the letter of the Commissioner of the General Land Office to the undersigned counsel, dated the 28th ultimo, which is printed in the Appendix.

If, therefore, Congress would now refer the Houmas claimants to the federal courts for a new adjudication of their claim, it would virtually amount to this: that after having called these parties before their own tribunals, and after these tribunals, both in the first instance and on appeal, have decided in favor of the claim, Congress, dissatisfied with this decision, would annul it, and create another tribunal to try the case *de novo*. If the case is correctly stated—and of that there can be no doubt—then it bears no discussion. It would be one of the class of cases which we quoted when speaking of the constitutional prohibition to take property *without due process of law*.

As all titles which existed in Louisiana, Arkansas, and Missouri, before the treaty of cession of 1803, ultimately had to be, and were, adjudicated upon and confirmed by Congress, it would follow, if our title would now be disturbed by Congress, that any of these titles might be attacked before and opened by Congress, and success would depend upon the influence exercised by the contestants.

PART SECOND.

If, notwithstanding the want of constitutional power, Congress should wish to review the case, were it only to satisfy themselves whether the decision to be made is in reality conformable, not only to law, but to equity, we are prepared to discuss the original merits of the grant.

On this subject we shall submit evidence to the honorable committee, and it will be necessary in the first place to explain the nature of this evidence.

In 1837, Mr. John S. Preston, on behalf of the widow and heirs of the late General Wade Hampton, who was largely interested in the Houmas claim, submitted a memorial to Congress, accompanied by

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documentary evidence, which was ordered to be printed by the Senate on January 29, 1838. It is Senate Document No. 144, of the 25th Congress, 2d session. When referring to it, we shall designate it as Senate document of 1838.

On August 12, 1844, Chancellor Bibb, the Secretary of the Treasury, ordered patents to be issued on two of the three claims made under the Houmas grant.

The opponents of the claim addressed strenuous and emphatic remonstrances to Congress, the consequence of which was that, by a resolution of the Senate, of December 10, 1844, the Secretary of the Treasury was required "to communicate to the Senate a copy of his written opinion, addressed to the Commissioner of the General Land Office, directing patents to be issued in favor of the claimants under the Houmas claim, in the State of Louisiana," &c.

In consequence of this call, Mr. Secretary Bibb made a communication to the Senate, dated January 8, 1845, which, on January 13, 1845, was ordered to be printed by the Senate, and is Senate Document No. 45, of the 28th Congress, 2d session. This we shall designate in our references as Senate document of 1845.

By prolonged agitation the adversaries of the claim succeeded in procuring the passage of a joint resolution by Congress, on the 26th of June, 1846, the purport of which was that the Attorney General of the United States was to examine the title of the Houmas claim, and to report thereon to the President, and if he found that patents under such claim had been issued contrary to law, the President was requested to cause proceedings to be instituted for the purpose of having the validity of such patent or patents judicially determined.

Thereupon Mr. Attorney General Clifford gave an official opinion, dated the 31st of December, 1847.—(4 Opinions of the Attorneys General, 643.)

The foregoing three documents, viz: the Senate document of 1838, the Senate document of 1845, and the opinion of the Attorney General, having been printed by authority of Congress, it was necessary to indicate the collections in which they are to be found. We submit, however, copies of them besides.

The Attorney General concludes his opinion in the following words:

"In conclusion, I am of opinion—

"1st. That the grant to Maurice Conway is a complete and perfect Spanish grant, to the extent of forty-two arpents from the river, and no more; that the said grant does not convey any lands beyond that extent; but that the title to the same is vested in the United States.

"2d. That the patents which have been issued in the case of the Donaldson and Scott claim, were so issued without authority of law, and are, therefore, void and without effect."

In consequence of this opinion, a suit was instituted in the name of the United States, to set aside the patents issued by direction of the Secretary of the Treasury on the Clarke and Donalson and Scott portions of the Houmas claim.

This suit was tried and decided by the United States circuit court at New Orleans, presided over by Mr. Justice J. A. Campbell, of the Supreme Court of the United States. In this decision, which was

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rendered on the 21st of November, 1856, the court held that the act of April 18, 1814, upon which the Secretary of the Treasury had based his decision that patents should issue, did not apply to complete grants exceeding a league square, like the Houmas claim. But the court confined itself strictly to the object of the resolution of Congress, and concluded the decision in the following words:

"I do not decide any question upon the validity of the defendant's title to the land they claim, nor upon the effect of any other act of the officers of the land office, in respect to it, in determining its boundaries, nor the effect of this patent, in any other respect than of its being a paper issued without legal authority."

We submit, also, written evidence, properly attested, which will, with more propriety, be described as we come to it. Among this are the title papers, surveys, and other proceedings in other confirmed Louisiana claims, which we shall use as precedents. That they are fit *precedents* will directly be shown. All these are certified by the register of the land office at New Orleans, as extracts from the records of the board of commissioners.

The only question to be examined, is the depth from the Mississippi river to which the claim is to extend.

The commissioners under the act of 1805, Mr. Charles Hopkins, Solicitor of the General Land Office, and Mr. Secretary Bibb, held and decided that the Houmas grant extended to the full depth claimed, that is, the Amite river and Lake Maurepas. (Senate Doc. of 1845, pp. 85, 126.) Solicitor Birchard, of the General Land Office, would limit it to a league and a half in depth, (Senate Doc. of 1845, p. 40,) and Mr. Attorney General Clifford, it has been seen, holds that its depth is only forty-two arpents from the Mississippi.

Hence, it is apparent that the only matter that ever was disputed in relation to the grant was its depth. A translation of the title papers is found on page 954 of Clarke's Land Laws, and also in the Appendix of the first volume of Biören's Laws of the United States, page 551. But it is unnecessary to recite the title at length, because it is evident that the controversy turns exclusively upon the meaning of certain words of the grant of the rear land made by Governor Galvez on June 21, 1777.

By this the governor granted to Maurice Conway, "*toda la tierra vacante y detras o á la espalda de los quarenta primeros que posee;*" literally, "all the land vacant behind and in the rear of the first forty which he possesses."

The order of survey by Governor Unzaga, the survey by Andry, and the final grant by Governor Galvez, expressly state the extent of the front on the Mississippi, the direction and course of the side lines, which open very widely, and that the side lines of the rear grant are to be prolonged in the same direction as those of the front grant. All this has never been disputed, and requires no further notice here.

Yet it may be proper to submit a summary statement of the title, to explain how the difference of opinion concerning the depth arose.

On the 9th of September, 1776, Maurice Conway, who was then the sole owner of the front tract, petitioned Governor Unzaga to grant to

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him all the vacant land in the rear of the first depth of forty arpents, of which he then was possessed.

On the 27th September, 1776, Governor Unzaga issued an order of survey, directing Andry, the government surveyor, to put the petitioner in possession of the vacant land in the rear of his first forty arpents.

On the 9th of October, 1776, Andry went on the ground, in company with Maurice Conway, Louis Judice, the commandant of the post or district, and the Indian chief who had sold the original front tract. There he measured the front line of ninety-six arpents on the river; then he retraced the side lines to a depth of forty arpents, planted stakes at the end of forty arpents, and other stakes two arpents farther back, "*para no deviar el rumbo*," which has been translated, "in order not to vary the direction," and by another translator, "in order to keep the course."

Upon the coming in of a sketch of this survey, Governor Galvez, Unzaga's successor, made, on the 21st of June, 1777, a complete grant to Maurice Conway of all the land lying in the rear of the first forty arpents, following the same direction, and referred to Andry's survey.

Thus the question arose, what was meant by "all the vacant land in the rear of the first forty arpents?"

The literal meaning for which the claimants contend is, all the land in the rear, between the prolongation of the side lines, which the government had a right to give; that is, as far back as the Amite river and Lake Maurepas, the first considerable water-courses, and at the same time the boundary between Spanish Louisiana and the British province of Florida. This, on a straight line drawn from the Mississippi, in the center of the front of the grant to the Amite, gives a depth of about thirteen or fourteen miles. The side lines, owing to their divergence, are considerably longer.

On the part of the opponents of the claimants, it is contended that, as Andry planted no stakes further back than forty-two arpents from the river, the grantee took only what was included between these side lines of forty-two arpents in depth and a rear line connecting the extremities of the two measured side lines.

As Congress always was the supreme appellate tribunal in the adjudication of land claims submitted to boards of commissioners, exclusive of every other jurisdiction; as, notwithstanding a previous final decision, we are again called before this tribunal by the petition of our adversaries, we are compelled to illustrate the question thus presented as we should do it before a court of Congress, however much we may regret that we cannot spare to the honorable committee these wearisome details.

The question then is, how are the words used in the grant, and in the survey to which the grant refers, to be construed? Certainly not according to the rules applicable to the description, location, and survey of grants in England and the United States, but as they were understood in Louisiana by Andry, the surveyor, and Galvez, the governor, themselves, at the time of these occurrences.

It is because this obvious rule was not adhered to, or rather because the materials for applying it were wanting, that the authorities in

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Washington city differed from the commissioners of 1806, who resided on the spot, and were in possession of those materials.

And herein lies the whole difficulty of this class of cases; a difficulty often felt by the Supreme Court of the United States, as is forcibly stated by that court in Bissell *vs.* Penrose, (8 How., 331:) "The inquiry was difficult and embarrassing, on account of the scarcity and imperfect materials within the reach of the courts from which to collect Spanish laws and ordnances, as they consisted of royal orders, orders of the local governors, and also the usages and customs of the provinces, which were not readily accessible to the profession or the courts in this country."

In United States *vs.* Arredondo and others, (6 Pet., 691,) the Supreme Court examined this subject very thoroughly. The court said, (p. 717): "From a careful examination of the whole legislation of Congress on the subject of the Louisiana and Florida treaties, we cannot entertain a doubt that it has from their beginning been intended that the titles to the lands claimed should be settled by the same rules of construction, law, and evidence, in all their newly-acquired territory; that they have adopted, as the basis of all their acts, the principle that the law of the province in which the land is situated is the law which gives efficacy to the grant, and by which it is to be tested whether it was *property* at the time the treaties took effect."

Ib., p. 718. "From the whole scope and spirit of the laws on the subject of Spanish titles, the intention of Congress is most clearly manifested that the tribunals authorized to examine and decide on their validity, whether special or judicial, should be governed by the same rules of law and evidence in their adjudication on claims of the same given character."

Ib., p. 719. "The selection of this tribunal for a final and conclusive adjudication of the large claims, affords neither an indication of the intention of Congress, nor furnishes us any reason that in the exercise of that jurisdiction we should consider that 'the principles of justice,' the rules of a court of equity, 'the law of nations,' of treaties 'of Congress,' or 'of Spain,' the rules of evidence, or 'the principles of law,' can be at all affected by the magnitude of the claim under consideration. The laws which confer the authority and point to the guides for its exercise make no such discrimination, and every 'principle of justice' forbids it."

Ib., p. 713. "Our next rule of decision is, 'and proceedings under the treaty.' By these are understood the acts and proceedings of the government, or others under its authority, subsequent to the treaty, in taking possession of the ceded territory, in organizing the local government, its acts within the authority of the organic law, the promises made, the pledges given by either the general or local government; also the proceedings of commissioners and other officers or tribunals appointed by Congress to decide and report on these claims, so far as they have adopted and settled any rules and principles of decision within their powers as guides to their judgment. These, in our opinion, are the 'proceedings under the power referred to, and intended by the law, according to which we may decide, and are made a rule or precedent for us.'"

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Ib., p. 713. "Where Congress have, by confirming the reports of commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is a legislative affirmance of the construction put by these tribunals on the laws conferring the authority and prescribing the rules by which it should be exercised, or which is to all intents and purposes of the same effect in law. It is a legislative ratification of an act done without previous authority, and this subsequent recognition and adoption is of the same force as if done by preëxisting power, and relates back to the act done."

Ib., p. 714. "There is another source of law in all governments, usage, custom, which is always presumed to have been adopted with the consent of those who may be affected by it. In England, and in the States of this Union which have no written constitution, it is the supreme law, always decreed to have had its origin in an act of a State legislature of competent power to make it valid and binding, or an act of Parliament, which, representing all the inhabitants of the kingdom, acts with the consent of all, exercises the power of all, and its acts become binding by the authority of all. (2 Co. Inst., 58 Wills, 116.) So it is considered in the States, and by this court. (3 Dall., 400, 2 Pet., 256, 257.)"

"A general custom is a general law, and forms the law of a contract on the subject-matter; though at variance with its terms, it enters into and contests its stipulations as an act of Parliament or State legislature. This court not only may, but are bound to notice and respect general customs and usage as the law of the land, equally with the written law."

So, again, in Mitchel and al. *vs.* United States, (9 Pet.. 741,) the court say:

"The confirmation of similar grants by acts of Congress, or by boards of commissioners acting under their authority, are also powerful evidence of the lawful exercise of the authority of these officers; and being proceedings under the treaty and laws, they are made a rule by which, among others, we may adjudicate on the claims of the present parties."

To the same effect is the case of Smith *vs.* The United States, 10 Pet. 331.

These principles, so convincingly stated by the Supreme Court, apply with great force to our case.

Those who contest the extent we claim for the Houmas grant, urge, that while it is true that the grant of Governor Galvez gave to Maurice Conway "all the vacant land behind or in the rear of his first forty arpents," between the prolongation of the side lines of the front tract, this description is too vague to attach to any particular land, may render the grant void for uncertainty, and can at best be only explained by consulting the certificate of Andry, to which the grant refers. This is found in the original Spanish, in Sen. Doc. of 1845, p. 8, and translated in Sen. Doc. of 1838, p. 18. From this certificate, it appears that Andry went on the spot, measured the front of the first grant on the river and its two side lines, each to the depth of forty arpents, and that at the end of these side lines he planted a post, and other posts, two arpents farther back, to indicate the second grant;

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that consequently the only land of which Andry gave possession to Maurice Conway, under the second grant of 1777, was what lay two arpents further back of the depth of the original grant, and that consequently the two grants combined should be restricted to forty-two arpents from the river.

This might be plausible and logical reasoning, if the "proceedings" of Andry were to be construed as an English or American grant or survey might be construed. Such, however, is not the rule of decision, as has been shown by the above-mentioned decisions, and is shown, with particular reference to surveys, by the following decisions of the Supreme Court of the United States:

In Buyck *vs.* the United States, 15 Pet., 224, the Supreme Court say: "In coming to our conclusion upon this point, we have not been influenced by any of the English common law rules, which make grants void for uncertainty; such as, for instance, if the king grants lands in a peat waste, without ascertaining what part, or the special name of the land, or how bounded, it is void for uncertainty, for there can be no election in that case. (Bacon, vol. 4, tit. Grant, 81.) And yet, if an individual so grant, it would be good. We apply to the case the laws and ordinances of the government under which the claim originated, and that rule which must be of universal application in the construction of grants, which is essential to their validity, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind, or be capable of being ascertained by extraneous testimony."

In The United States *vs.* Low., 16 Pet., 167, Mr. Justice Catron says: "According to the strict ideas of confining a survey to a location in the United States, the survey would be located adjoining the natural object called for, there being no other to aid and contest the general call; and therefore the head of the lagoon would necessarily have formed one boundary; but it is obvious more latitude was allowed in the province of Florida."

In the case of Smith *vs.* the United States, 10 Pet., 331, the Supreme Court held: "It has also been distinctly decided, in the Florida case, that the land claimed must have been severed from the general domain of the king, by some grant which gives it locality by its terms, by a reference to some description, or by a vague general grant, with an authority to locate, which must have been made before the 24th of July, 1818."

The cases of the United States *vs.* Forbes, 15 Pet., 181; O'Hara *vs.* The United States, 15 Pet., 275; United States *vs.* Clark, 16 Pet., 231, are signal instances of the latitude which was allowed in surveys. Indeed, a survey was by no means indispensable to the validity of a grant.

In the case of The United States *vs.* Arredondo, 13 Pet., 134, the Supreme Court say: "We do not consider the want of a survey as interfering with the right of the party to the land granted; but it must be taken, near as may be, as it is described in the petition, where it was asked for, and as it was granted, and cannot be taken elsewhere. If it cannot be found there, the appellees have no claim to an equivalent; or, if upon the survey, it shall be found to interfere with

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previous grants to third parties, the concession will be lessened in quantity, according to the extent of the rights of third parties, and an equivalent for such diminution cannot be surveyed elsewhere."

The only ruling and universal principle applicable both to Spanish grants and surveys, was: *Id certum est quod certum reddi potest.* A description which, by the aid of extraneous testimony, could enable a surveyor, acquainted with the country, to locate a grant with a reasonable degree of adherence to the presumable intentions of the grantor, is all that would be required; and our grant comes entirely within that rule.

We have no difficulty in doing away entirely with the objections drawn from the fact that Andry ran the lines of the new grant only two arpents back of the terminus of the first grant, and did not close the back line at all. In this respect Andry followed a usage universal in Lower Louisiana, in all grants having a great depth.

This section of country is a flat alluvial plain, covered with woods, subject to periodical overflows of the Mississippi, except when protected by embankments. The land is highest on the immediate banks of the river, where the overflows deposit the coarser particles of the detritus held in suspense in the water. The rear lands are mostly very low, covered with water a great part of the year, and even when the river is low, very generally marshy and difficult to penetrate. Land had little value in those days; but the labor of a superior officer, such as the surveyor general of the province always was, had value, and as the payment of this labor was the only charge incumbent upon the grantee, it was diminished as much as possible. The surveyor general, therefore, very frequently confined himself to run the front line on a water-course, and to stake off the side lines for a distance short of the forty arpents granted. As these side lines were always straight lines, and as the depth was indicated in the grant itself, this sufficed to give to the grant a fixed locality, which could be traced upon the ground, without liability to error, by any surveyor that might come afterwards. On this point our evidence is perfectly conclusive, and as this point is the main reliance of our adversaries we shall discuss it very fully.

We applied for information and evidence on this subject to the surveyor general of the United States in Louisiana. In reply, the undersigned counsel received from him a letter, dated the 28th of last January, and the documents mentioned in it. All these are respectfully submitted as document A.

The material parts of the letter are as follows:

I now send you the affidavit requested to the fact that the French and Spanish surveyors did not generally survey to the full depth the side lines of tracts on the river, but merely measured their fronts, and established bornes, or posts, at regular intervals from each other, and at short distances from the river on such side lines, for the purpose expressed in their *procés verbal*, of indicating their direction. This was sufficient to comply with the requirements of the order, in virtue of which the survey was made; nor was more required by the grantee, for he and the neighbor on either side signed, with the surveyor, the *procés verbal*, therein expressing satisfaction therewith.

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Inclosed is a certified list of a few of the very many instances where this rule was followed by the French and Spanish surveyors.

I cannot conceive with what reason it can be asserted that the establishment by Andry, in the survey of the Conway claim, of posts at the distance of forty-two arpents from the river, restricted it to this depth; for he expressly states their only purpose was "in order to keep the course" of the prolongation of the side lines. And this was his frequent custom.

Two instances occur at once to my memory—those of the claims of Piseros and D'Etrepy. (Old board reports, Nos. 88 and 3, in T. 12 S., R. 8 E., S. E. district, east of the river.) I inclose copies of my rough translations of his *procés verbal* in both these surveys. You can have them verified and compared with the records of the register of the land office in New Orleans. In these surveys, for the same purpose as fully expressed, he established posts at forty-two arpents from the river; and yet the claims have been surveyed, and even respected by the United States, with the entire depth to the lake.

In townships 12 and 13 S., R. 10 E., S. E. district, east of the river, you will find several claims (those of Fortier and others) where the surveyor, Lalande de Ferrières, in 1765, ran out the side line less than twenty arpents from the river, and then upon another course established, at one or two arpents further, bornes, to show the direction of the prolongation to Lake Pontchartrain, thus rendering the side lines broken, and not always parallel. They have been so resurveyed by our Government.

Respectfully, your obedient servant,

W. J. McCULLOH,
Surveyor General Louisiana.

LOUIS JANIN, Esq., *New Orleans.*

The affidavit mentioned in this letter is as follows:

I, William J. McCulloh, surveyor general of public lands in the district of Louisiana, solemnly swear, it is within my knowledge, derived from frequent reference to the plats of survey, (original or copies filed in this office,) that it was the general custom of the surveyors employed by the French and Spanish governments, in locating tracts in the province of Louisiana, having a depth of forty arpents, merely to measure the fronts of such tracts, and to indicate the courses of the side lines by planting bornes or posts at equal intervals from each other, and at short distances from the river, without actually running and measuring the full depth of such side lines, and without closing the survey by running the rear line between the extremity of such side lines; and that in tracts having greater depth than forty arpents, or a depth extending to another river, lake, or other natural boundary, it was their custom, *invariably followed*, as far as I can ascertain, after careful examination, to measure to the forty arpent points on such side lines, and then at short distances therefrom to establish bornes or posts, to exhibit the further prolongation of the side boundaries.

WILLIAM J. McCULLOH,
Surveyor General, Louisiana.

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Sworn to, and subscribed before me, at Donaldsonville, Louisiana, this 28th day of January, A. D. 1860.

CHARLES S. ILSLEY,
Justice of the Peace.

The next document included in his letter is a certificate giving a list of 63 confirmed claims, which were surveyed by French and Spanish surveyors, in the manner described in Mr. McCulloh's letter and affidavit, and have been acknowledged and confirmed by the United States in conformity with these surveys.

At the bottom of this list Mr. McCulloh gives the following certificate:

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, La., January 28, 1860.

I certify, that by authenticated copes of the plats in this office, by Lewis Andry, Lallande de Ferrieres, Carlos Trudeau, Manuel Andry, and F. V. Potier, it appears they did not, in any of their surveys of the above-mentioned claims, run the side lines to the full depth claimed, but that they only measured their river fronts, and on the side lines established bornes to indicate their direction.

The above cases are taken indiscriminately, and many other analogous cases could be cited to show that it was the rule of the French and Spanish surveyors in Louisiana to make only such partial surveys of claims fronting on the Mississippi river.

WILLIAM J. McCULLOH,
Surveyor General, Louisiana.

Document A also contains translations of the title papers, *procés-verbals* of French and Spanish surveys, and plans made by French and Spanish surveyors, all belonging to titles confirmed by the United States. They fully prove Mr. McCulloh's statements in his letter to the undersigned.

Before the claimants had receive this very satisfactory evidence from the surveyor general of the United States for the State of Louisiana, they had procured from the office of the register of the land office at New Orleans, who has in charge all the records of the various boards appointed to adjudicate and report on land claims in the southeastern district of Louisiana, copies of title papers in confirmed claims, upon which the confirmation was based, and which, therefore, according to the Supreme Court of the United States, are to be considered as proof of usages and customs existing when rights accrued under the former government of Louisiana, and therefore to be respected by the United States. We submit them as documents B, C, D, E, F, G, H, I, K, L, M, and N. Each of these documents is certified by the register of the land office as having been given in evidence in support of a particular claim, and the number of the claim; the report in which it was embraced, and the act by which it was confirmed, are stated in the register's certificate. Each of these documents is accompanied, either by a translation of its material parts, or has on the cover a statement hat they are translated in this brief. Thus the fullest opportunity for

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examination is afforded to those whose duty it may be to enter upon this inquiry, and they will be found fully to support our explanations of the usages and customs of the time. We are painfully aware that the minute examination in which we are engaged cannot be otherwise than irksome to the committee, as it is to ourselves. But this is not our fault, it is the fault of Congress. Congress constituted itself the supreme tribunal in these matters, and forced the owners of the Houmas claim to appear before them. They have been before Congress since the 9th of January, 1812. At last, on June 2, 1858, Congress disposed of the matter. And now the petition of certain intruders upon our land compels us to appear again before Congress. Congress having assumed jurisdiction over the matter, can no more than any other court decline the investigation of the facts, upon the decision of which the controversy depends. And we hope, therefore, not to be blamed if we give to our examination that extension which the abundance of material puts within our power, and which the special character of the subject, and its novelty to those who are to investigate it, imperiously demand.

Yet we shall specially mention only a few of these documents. In connection with the evidence furnished by Mr. McCulloh, we must, however, refer to document B, which embraces the original order of survey, *procès verbal* of Andry, and complete title, in the claim of Dominique Bouligny, confirmed as claim No. 313 by the old board, (2 Public Lands, 286.) This, with the exception of the description of the land, is almost literally the same title which Maurice Conway had obtained, namely, a petition by Ducros, a first decree by Governor Unzaga, ordering the surveyor to put the petitioner in possession, a report by Andry, and a final grant thereon by Governor Galvez. This explains better than any philological disquisition, how Andry and Galvez understood these matters, and by itself puts to rest the reasoning of our adversaries who would interpret them differently. The petitioner asks for the land behind his first forty arpents as far as Lake Barataria. Unzaga orders Andry to put him in possession of the land claimed. Andry goes on the ground, as he says, "in consequence and in obedience of that decree," is accompanied by the grantee and his neighbors, measures the side lines to the depth of forty arpents, and then two arpents further back, where he plants other and the last posts. Upon this the governor decrees that, considering Andry's report, from which it appears that he had put Ducros in *possession* of the land petitioned for to the lakes, he grants that land.

Let it be observed that Andry does not say one word about possession; yet the governor construes that Andry's going upon the land newly granted to the depth of two arpents, in company with the grantor, is putting him in possession of the whole grant. And thereupon the governor grants the land, not only the two arpents in depth actually visited by Andry, but the whole land demanded to the lake, many miles back.

This is literally what was done in Maurice Conway's case, except that the land granted was "all the vacant land in the rear of the front depth," instead of the well-defined terminus of the lake.

What stronger proof could be adduced than this to show that we

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have been so many years disturbed and annoyed because the authorities in Washington city were not in possession of such title papers and precedents, which were in great number before the commissioners of 1806, and became their guides?

Those who would make the validity of old grants in Louisiana depend upon a pains-taking and microscopic dissection of the language of the title papers in a dubious translation, do not execute the treaty faithfully and honestly. They must be understood according to the intention and in the spirit of the original parties to them. The relations of the Spanish governors and the inhabitants of Louisiana were patriarchal, good faith and liberality, and a corresponding trustful and loose manner, characterized them, and an instance of technical quibbling never was heard of.

To show the primitive simplicity of the colonial government of Louisiana, and the absence of all strictness and formality in the Spanish mode of granting lands, we may instance the case of "The United States *vs.* Davenport's Heirs," (15 Howard, p. 1,) in which two incomplete grants made by a commandant, one for ninety-two thousand one hundred and sixty acres, and the other for two hundred and seven thousand three hundred and sixty acres, were confirmed by the Supreme Court of the United States.

"The evidence of the grant," says the Supreme Court, (p. 5,) "consists in copies of the petition of Edward Murphy to the commandant, dated in February, 1798, for a donation of the tract of La Nana, situate to the east of the Sabine river, on the road leading from the town of Natchitoches. The tract asked for forms a square of four leagues upon that road, the center of which is the prairie adjoining the bayou La Nana. The motive of the application was that the petitioner might have summer pasturage for his cattle and other animals. The petition was granted by the commandant, and the procurator was ordered to put the grantee in possession. The procurator fulfilled this order the 1st of August, 1798, by going upon the land with the grantee, and in the presence of witnesses 'took him by the right hand, walked with him a number of paces from north to south, and the same from east to west, and he, letting go his hand, (the grantee,) walked about at pleasure on the said territory of La Nana, pulling up weeds, and made holes in the ground, planted posts, cut down bushes, took up clods of earth and threw them on the ground, and did many other things in token of the possession in which he had been placed, in the name of his Majesty, of said land, with the boundaries and extension as prayed for.'" And this was the whole title, and it was confirmed.

In the same case, another claim to a tract of land called "Las Omegas" was prosecuted. The order of the commandant to the procurator, to put the petitioner in possession, was executed with the same ceremonial as in the case of the Nana tract.

These were incomplete titles, executed not by the governor, but by the commandant, and together they covered two hundred and ninety-nine thousand five hundred and twenty acres. Those who dispute the Houmas claim would undoubtedly have rejected them, but the Supreme Court of the United States confirmed them.

We hope, therefore, that the great two arpents argument, which has

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so long been the main reliance of our adversaries, and the main cause of the vexation we have suffered, may now be considered as fairly and permanently disposed of.

We are thus brought to the real original question, viz: What extent of land passed under the grant, irrespective of Andry's proceedings, which were sufficient to put us in possession of whatever was included in the grant, but explained only the width in front and the direction of the side lines, and not the superficial extent. That must be collected from the grant itself. It is, "*all the vacant land lying and adjoining his front tract of ninety-six arpents on the river, by forty in depth, between the prolongation of the side lines of the front tract.*"

All the title papers agree in this. (See Senate Doc. of 1838, pp. 17 to 20.) Conway first petitions for "*all the depth which may be vacant immediately after the said depth of forty arpents.*" Governor Unzaga, on this petition, directs Andry, the surveyor, to go on the land and put the petitioner in possession of the land "*which then may be vacant on the back of the forty arpents of depth which he possesses, and running in the same direction.*"

Andry certifies that, in pursuance of the above decree, he had gone on the land in the presence of the commandant and the vendor; that "*he proceeded to put the petitioner in possession of the depth granted to him by the foregoing decree;*" that, having ascertained the direction of the side lines of the front tract and measured them on the ground, he ran them two arpents further back, "*para no variar el rumbo,*" in order not to vary the course, which plainly means that he ran these two short lines to indicate the course the further prolongation of those lines should have.

This report having been laid before Governor Galvez, he issued the grant; and, referring to Andry's proceedings, he called these "*proceedings concerning the possession which he had given to Maurice Conway, by virtue of the foregoing decree issued by my predecessor, of all the vacant land behind or in the rear of the first forty arpents;*" and, finding these proceedings conformable to the regulations, he granted to Conway "*the said land behind or in the rear of the forty arpents,*" "*following the same direction as those.*"

That these three men, Unzaga, Andry, and Galvez, who were men of intelligence, and one of whom had sufficient worth and capacity to beat the British and to become viceroy of Mexico, should not have known and understood what they did, is not fairly to be presumed. They used an indefinite term, "all the land in the rear," but they knew that it was well explained by a local usage. If these words were included in a cession *to* the United States, they would infallibly be explained according to their literal meaning, which is, "all the land the Spanish governor had a right to grant between the prolongation of those side lines," and that was up to the Amite river, at that time the boundary of the British province of West Florida. This is a much plainer description than that in the treaty of cession of 1803, under which the United States claimed the country bounded on the east by the Perdido, on the west by the Mississippi, north by the thirty-first degree of latitude, and south by the island of Orleans,

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which for many years before had always been administered as a portion of West Florida.

But these indefinite terms, "all the depth," "the depth that may be found," "the depth according to the titles," and others of similar import, are very frequently found in sales passed in the Spanish times in Louisiana, and occasionally even in grants. Their well-understood meaning was that the land was to run back between the side lines, until they struck a considerable water-course, and if the side-lines met before touching such a water-course, they stopped at that point. There existed, besides, a local usage peculiar to Lower Louisiana. There exists a chain of lakes to the east of the Mississippi—Lakes Maurepas, Pontchartrain and Borgne—all connected together, and the latter with the Gulf of Mexico, and it was customary with the governors to make grants run back from the river to these lakes.

According to this usage this grant was understood by all of the parties to it. But the topography of this then almost impenetrable country was but little understood, and it is more than probable that they did not know but very indistinctly at what distance from the river the side lines when prolonged would reach Lake Maurepas, or the principal river falling into it, the Amite. These points, and consequently also the superficial quantity, the governor left to be ascertained by the grantee when he should feel it his interest to do so. In not one of the numerous river grants running to these lakes—and we shall presently speak of a number of them—were the side lines ever protracted to the lake, and its contents ascertained with accuracy. So this grant never was actually surveyed until September, 1805. (Senate Document of 1845, pp. 6, 7.) This survey was laid before the board of commissioners; then, for the first time, the precise length of side lines, the points where they reached Lake Maurepas and the river, and the superficial extent of the grant, were ascertained. Upon this survey the confirmation was made.

We shall presently show that it is with this extent that the claim was possessed in Spanish times; but we would previously show that our adversaries are as usually mistaken when they say that this survey was unauthorized, because it was made after the change of government.

"The fourth section of the act of March 2, 1805, (1 Land Laws, 123,) required the claimant, even under a complete grant, to file his grant and a plat. These private surveys constitute a part of the evidence of the claim upon which the decision of the commissioners was founded. (Bissell *vs.* Powers, 8 How., 334.) Congress have thus virtually recognized these private surveys as competent and proper evidence of the particular tract of land claimed under the grant or concession, carrying out thereby the construction previously given to the act of 1806, and the instructions of the Secretary. (Ibid, p. 336.) The private survey to Mackay, of February 27, 1806, which was filed with the claim, under the act of March 2, 1805, designated and located the grant, so as to give effect and operation to the act of 1811, reserving the premises from sale. (Ibid., p. 341.)"

From this case and the cases of Menard's heirs *vs.* Massey, 8 How., 309; Stoddard's heirs *vs.* Chambers, 2 How., 284; Mills *vs.* Stoddard,

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8 How., 364; Barry *vs.* Gamble, 8 How., 53, it appears that the land designated by a private survey filed with the board of commissioners was withdrawn from sale under the sixth and tenth sections of the act of Congress of March 3, 1811, and that the subsequent confirmation of the claim applied to the land so designated.

It will be freely admitted that the grant of Galvez to Maurice Conway is quite contrary to modern practice, and to what does and must prevail in older countries, where land has more value, and that it is quite indefinite in its terms as to the quantity of land granted.

But its locality can be, and has been, ascertained with absolute precision, by protracting the side lines to the water-courses in the rear, and "a description which will identify the land is all that is necessary for the validity of a grant." (McArthur *vs.* Browder, 4 Wh., 485.) "If a grant be made which describes the land granted by courses and distances only, these, though not safe, are the only guides given to us, and must be followed."—(Chinoweth *et al. vs.* Lessee of Haskell, 3 Pet., 96.)

Our opponents, in their attacks upon the grant, question the best established principles. They dispute the power of the governor, although it is well known that his power was unrestricted, (9 Pet., 132, 134, and 135; 6 Pet., 691; 7 Pet., 51; 8 Pet., 436; 15 Pet., 128,) and that no grant of the governor was ever revoked by the king, and no grant ever rejected by the Supreme Court of the United States, on the ground of want of power on the part of the governor. They find objections to the grant in its magitude, although the Supreme Court has decided that this can exercise no effect whatever upon the validity of a grant.

They assert dogmatically that the grant ought to have been restricted according to O'Reilly's regulation, although in Delassus *vs.* The United States, 9 Pet., 135, Chief Justice Marshall said: "The objection made to this plain title is, that the concession is not made in pursuance of the regulations of O'Reilly. This objection was considered in the cases heretofore decided by this court, and especially in 8 Peters, 455. It is apparent that these regulations were intended for the general government of subordinate officers, not to control and limit the power of the person from whose will they emanated. The Baron de Carondelet, we must suppose, possessed all the powers which had been vested in O'Reilly."

In the case of Arredondo, 6 Peters, 760, the Supreme Court confirmed a grant of 289,645 acres, in the case of Mitchel, (9 Peters, 725,) one of 1,200,000 acres, and in the case of Davenport's heirs, one of 92,160, and the other of 207,360 acres; and although they were made by simple orders of a commandant, and not ratified by the governor. Our claim contains considerably less than 200,000 acres.

It is evident that our adversaries must have taken it for granted that their assertions would be implicitly believed, and pass without contradiction.

It is clear that the governor had the power to make the grant, that he actually made it, and that whatever is included in it became the property of the grantee.

In support of the correctness of the explanation we have given of

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the meaning of the words used in the grant, we submit the testimony of the three oldest and most experienced surveyors in Louisiana, Augustus S. Phelps, Allou d'Hémécourt, and Louis Bringier. It contains, besides, explanations of the usual mode of surveying, of which we have already sufficiently spoken. But their testimony may be considered to be more entitled to weight if given entire.

The testimony of A. S. Phelps is contained on pages 33, 34, and 35 of document O, which is the record in the suit of The United States, plaintiff in error, *vs.* James McMasters and Richard A. Stewart, which was tried in the circuit court of the United States, at New Orleans, and is now pending, on appeal, in the Supreme Court.

Answers of Augustus S. Phelps to the interrogatories propounded by defendants.

Answer to the first interrogatory. I was first commissioned as United States deputy surveyor for the State of Louisiana in the year 1828 or 1829, and have been recommissioned in the same capacity under the several surveyors general from that time to the present.

Answer to second interrogatory. I have resurveyed more than a thousand tracts of land, the titles to which were derived from French or Spanish grants, and mostly located upon either side of the Mississippi river, in the section of country lying between the mouth of Red river and the lowest grants on the Mississippi river.

Answers to third to ninth interrogatories, inclusive. In the portion of Louisiana mentioned in the section of country above-mentioned certain general rules appear to have been observed by the government officers and surveyors, during the whole period of the colonial existence, as regards the concession and survey of lands, whether under French or Spanish authority. In the earlier period, grants were usually or almost universally given to settlers fronting on rivers or other water-courses, calling for a specified distance of front on the bank of the water-course, with side lines running back from the front and nearly at right-angles with the water front at the point of departure, to a distance of forty arpents, equal in our measure to $116\frac{3\,6}{1\,0\,0}$ English chains. A right line connecting these two points completed the boundary of the tract, without specifying or having reference to the superficial quantity, which was seldom or never mentioned in either the grant, plat, or *procés verbal* of survey. As the settlements in the colony extended and increased, double concession grants, as they were called, were given, bounded by a grant or grants in front, with an extension of the side lines of the tract in front of them to an additional distance of forty arpents, usually, but frequently, specially in the vicinity of New Orleans, to the lake or some water-course in the rear, and sometimes to an indefinite distance.

I have examined and inspected many hundreds of all the papers connected with the French and Spanish grants, being original documents. In the decree or concession which was issued by the representative of the king, and which conveyed the fee to the land, I do not remember a single instance in which it described the course or direction of any of the boundary lines. The usual form in which the

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boundaries and extent of the tract was expressed in the concession was the specific length of the front on a particular water-course, bounded above (on one side) by the lands of A B, (the adjoining proprietor,) and below (on the other side) by the lands of C D, or public domain, as the case may be, and extending to the ordinary depth, (*profundidad ordinaria,*) which was always understood to mean forty arpents of Paris, or, as frequently the case in the vicinity of New Orleans, to a water-course; and sometimes, but very unfrequently, to some other specified or to an indefinite distance. Some instances I have known in which it was stated in the grant of a double concession that the length of the front of the double concession was a certain length, corresponding with the front of the tract immediately in front of it, though, in fact, it was surveyed, occupied, and always held and regarded as having a much greater or less length of front, as the case might be, depending on the converging or diverging of the side lines of the front tract.

In the plat and *procés verbal* of survey emanating from the King's surveyor, who was always a commissioned officer of high standing, the general custom was to note very definitely the following facts: the shape and length of the front line or lines, the course or direction (usually a right line with a magnetic bearing) of the side lines, their lengths, and the names of the grantee and of the adjacent proprietors. The courses and lengths of the back or rear lines were seldom or never mentioned in the *procés verbal*, and were not often shown upon the face of the plat. The main object with French and Spanish surveyors was to furnish the means of perpetuating and identifying, with great certainty, the boundaries of the front portion of the tract of land surveyed, together with the means of ascertaining, at any future time, the direction of the side lines, giving little attention to the boundaries of the balance of the tract, which in fact was, at the time, frequently nearly, if not quite, inaccessible. In order to define and exhibit clearly and minutely their operations, as made on the front of the tract, it was necessary to protract the plat or diagram on so large a scale that the ordinary size of paper used by them generally (foolscap) could only contain the figure of the front portion of the tract, and extending back a few arpents, which was indeed as far, generally, as the marks of the survey on the ground extended.

So far as I have been able to learn from tradition and observation, the French and Spanish surveyors, who delivered the land to the grantee, always endeavored to run and establish the side lines of the grants in this portion of the colony, so that said side lines should be, as near as they could judge, at right angles with the general course of the water-front within view. This view, in most cases, must have been of limited extent, by reason that the banks of the water-courses must have been densely covered with forest trees and undergrowth. Hence it happens that, in a great majority of cases, the side lines of the grants are either diverging or converging, and not parallel. Another result that would be derived from the practice of their system, and which is found to be the fact, is, that within this portion of the colony there is not to be found any vacant lands of triangular form, or otherwise lying between adjacent tracts, as granted and surveyed,

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only when lands once granted have been entirely abandoned by the grantee or his successors, except in one case, which is in West Baton Rouge, and in this case there is ground to believe it resulted from an unintentional error.

In resurveying French and Spanish grants in Louisiana, whether under contracts with the general government or for individual claimants, the United States deputy surveyors have been instructed by their superiors, in all cases, to conform to the original mode as far as it could be known and was possible. For my part, I have always conformed to and obeyed those instructions to the best of my ability, and all other surveyors, so far as I know and believe, have pursued the same practice. I have never heard the propriety of this practice questioned, unless it may be in the case now in controversy.

The remainder of his testimony relates to a particular grant, has no bearing upon the subject under review, and is therefore omitted.

The depositions of Allou d'Hémécourt and Louis Bringier are to be found on pages 68, 69, and 70 of document P, which is a certified copy of all the testimony introduced in the case of The United States *vs.* Clarke, the very suit which was tried by Mr. Justice Campbell, of the Supreme Court of the United States, under the joint resolution of June 26, 1846, for the purpose of testing the authority under which Secretary Bibb had issued patents upon the Houmas claim.

Depositions of d'Hémécourt and L. Bringier, for the defendants.

Filed August 2, 1855.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

In the United States circuit court, fifth circuit and eastern district of Louisiana.

UNITED STATES
vs.
DANIEL CLARK *et al.*

Jean Charles Allou d'Hémécourt, a witness for the defendants, having been duly sworn, deposes:

I am sixty-six years of age; I am a professional surveyor; have been engaged in the profession for the last forty years, the last twenty-seven of which in Louisiana; I have been well acquainted with the surveys of the old Spanish surveyors, particularly those of Messrs. Laveau Trudeau, Andry, and Lafon. It was the custom of these old surveyors, in surveying a piece of land, not to trace out every line of the tract and run out the side lines to their extreme limits, but simply to establish the front line and run the side lines back two or three arpents, so as simply to establish their proper course and direction. This was done also in surveying tracts bordering on the river bank.

The expression in regard to the depth of tract in sales, *avec toute la profondeau que s'y trouve ou trouvera, ou qu'il peut y avoir*, all the depth which may be found there is a common and usual one in sales

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of that period. This expression I have even seen in concessions; the usual form, however, in these was "as far back as the lake," or "as far back as the *prairies inondées,*" inundated prairies.

When these expressions were used, they were intended to sell or concede all the depth that could be found in rear of the front line, without guarantee of the special number of arpents. It is to my knowledge that all the plantations along the river above Carrollton were granted in this way, with all the depth to the lake. The lake is more than two leagues distant from the river.

Mr. Louis Bringier is the only surviving surveyor of olden days that I now know of.

No cross-examination.

ALLOU D'HÉMÉCOURT.

Excepted to by United States Attorney.

LOUIS BRINGIER also a witness for the defendants, having been duly sworn, deposes:

I am seventy-one years of age; I have been a surveyor for thirty-five years past, and was made surveyor general of Louisiana in 1825; I was first made a surveyor of the parish of St. James, by Governor Villeré in 1822, or thereabouts; I first began making maps as far back as 1808.

I have in my possession certain archives of the State, comprising Mr. Laveau Trudeau's old surveys. Spanish surveys I have had frequent opportunities of examining, but not so many of the old French surveys.

I was acquainted with Mr. Lafon, surveyor; he was a man rather extravagant in his notions, *un peu braque;* he was the deputy of the surveyor general south of Tennessee; I do not know that he was ever surveyor general of this State. The first surveyor general of this State was Laveau Trudeau; he was succeeded by Bouchon, to whom succeeded Duplantier.

Having heard the testimony of Mr. D'Hémécourt, I agree with him, and corroborate his view as to the manner in which surveys were made of side lines, and also as to the force of the expression, "all the depth which may be found." The side lines were surveyed their entire length only, at the request of parties who had to pay for the extra labor thus imposed on the surveyor, and to clear the road to enable him to proceed.

No cross-examination.

L. BRINGIER.

The foregoing testimony was taken at the request, and by the consent, and in the presence of J. P. Benjamin, Esq., for the defendants, and Thomas S. McCay, United States attorney, and by me reduced to writing in the presence of the witnesses, and by them subscribed and sworn to.

In testimony whereof, I hereto set my hand at New Orleans, this 2d August, 1855.

ROBERT M. LUSHER,
United States Commissioner, Eastern District of Louisiana.

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All this evidence was taken contradictorily with the district attorney of the United States.

In further illustration of this mode of construing and surveying grants, we shall refer to some of the documents already submitted. Let it be, however, understood that this was a local usage, prevailing only in the lower part of Louisiana, where there is infinitely more swamp than dry land, notwithstanding the extensive embankments now constructed, where the nature of the ground, and the water, and the tangled growth which cover it, render surveying very laborious and costly, and where the rear lands were generally of very little value. By far the greater part of the Houmas grant is such swamp.

Document K are title-papers in the claim of B. Lafon. (Claim 316 of the report of the old board, 2 Public Lands, 278.) There is a complete grant by the governor and *commissaire ordonnateur*, of March 10, 1763, to Maxent, the granting words of which are:

"We grant to him the land he petitions for, at the place called Chantilly, to wit: beginning at the boundary of the thirty arpents, situated in said place which we granted on the 9th instant to Dufossat, as far as the point called Chefmenteur."

Upon this grant, and upon the further order of the intendant, Morales, Carlos Trudeau, then the surveyor general of the province, made, on the 28th of April, 1800, a "*plano figurativo*," (that is, not an actual survey, but a map compiled from materials in his office,) representing, as the report says, the remainder of the land, from the boundary of the village or settlement of Chantilly to the river Chefmenteur, petitioned for by the applicant. And by referring to the *plano figurativo*, of which a certified copy is in the document, it will be found that, under this description, Trudeau set apart for the petitioner the whole remainder of the peninsula, as far as Lake Pontchartrain, the Chefmenteur river, and Lake Borgne, bounding it by the adjoining concessions.

There never was in Louisiana a surveyor general longer in office, more experienced, more competent, and more universally respected than Carlos Trudeau.

Document L are title-papers of the claim of Charles J. B. Fleuriau, reported on by the old board, No. 213, (Public Lands, vol. 2, p. 272,) and confirmed by special act of Congress, of July 27, 1854.

The first is a petition of Joseph Villars Dubreuil, of the 1st of June, 1763, to the governor and *commissaire ordonnateur*, showing that already, in 1744, he had conceived the project to establish several stock farms; that, with a view of finding lands adapted to this purpose, he had examined the lakes of the "Onachas;" that he had only discovered a tongue of land near La Fourche des Chetimachas, (now called Bayou Lafourche,) in the rear of Lake Perrier, fit for his purpose, and belonging to the Indian tribes of the Onachas and Conachas; that he had made a bargain with these Indians, by which, for a certain number of heads of cattle, they had abandoned to him the above-mentioned land, and also another tongue of land, separated from the former by the Bayou Chaique-machas, (*sic.*) The first tract may have 25 arpents front of high land, bounded on one side by Bayou Chaique-machas, and on the other by Lake Perrier, and bounded (on the other two sides)

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by trembling prairies. He therefore prays that his aforesaid purchase from the Indians be approved.

On this petition the governor and *ordonnateur* made to him a grant, on the 1st of June, 1763. The only description of the land in the grant is: "the land mentioned in the petition."

Under the confirmation of this grant by special act of Congress: more than 40,000 acres have been surveyed by the United States for the claimants. It is true that the greater part of this land is worthless; and such is the case with all the *large* grants in the lower part of Louisiana, near the Mississippi.

Document M relates to the claim of the widow of Jacques Fortier. (No. 68 of Harper's report of January 6, 1821, confirmed by act of Congress of February 28, 1823—a general act.) The notice represents that she is the owner of a tract of 27½ arpents front of the Mississippi, "*with all the depth to be found.*" This claim was confirmed in the very words in which it was made.

Thus we find this expression in a report confirmed by Congress. And how was it interpreted by the United States surveyor? This is shown by the approved survey. The side lines were protracted until they met, the front tract having converging side lines. It is evident that, if the side lines of the front tract had been parallel or diverging, they would have been protracted until they reached Lake Pontchartrain, this tract being in that part of Lower Louisiana, on the eastern bank of the Mississippi, where grants very frequently extended to the lake, and to which the custom we contend for applies.

But document N is a case absolutely in point, and, as we presume, unanswerable. This is the claim of Charles Devilliers, confirmed by the old board of commissioners as claim No. 135, (2 Pub. Lands, 26.) Perry, the original claimant, presents a petition on the 3d of November, 1764, to d'Abadie, director general and commandant of the province, in which he represents that he is the owner of a tract of 15 arpents front on the Mississippi, by 40 in depth; that he has a large family, and limited means, and therefore prays for a grant of "*toute la profondeur, et largeur de sa terre excedant ses quarante arpents contenant quinze arpents de face;*" that he had received no concession, but had purchased his front tract. The underscored passage is absolutely the only description of the land asked for contained in the petition, and means "all the depth and width of his land beyond his forty arpents, having fifteen arpents front."

Here, then, we have the identical description of the land asked for, which is found in Maurice Conway's petition and grant, "all the depth" behind the front depth of forty arpents of the front tract.

On the 6th of November, 1764, the director general (or governor) made a grant upon this petition. Had he followed the precise words of the petition, and simply granted "all the depth," we should here have the exact counterpart of the Houmas claim. But the governor explains in the grant what he understands by "all the depth," and it can hardly be questioned that his act is the best proof of a local usage, as he contributed to create it. The grant says, that "considering the demand which Mr. Perry has addressed to us, to grant to him the depth which may be found beyond the ordinary depth of forty arpents

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of his plantation, which has fifteen arpents front on the river St. Louis or Mississippi, below and on the same side as the city of New Orleans, * * * * in virtue of the powers, * * we have granted, and hereby grant to him, the said depth beyond his ordinary depth of forty arpents, *as far as the lake.*"

The words here above quoted are the only ones describing the land referred to, either in the petition or in the grant. The governor sets out by stating that he intends to grant the land asked for by the petitioner—that was, "all the depth;" and with that intention the governor says that this depth goes to *the lake.*

So, in our own case, the governor would have mentioned the watercourse to which "all the depth" extended, if a correct map of the country had been in existence at that time. Being uncertain whether the prolongation of the said lines would touch the lake or the river, they left this matter to be inquired into by the grantee, if he should choose to take the trouble and incur the expense, being persuaded that the well known local term of "all the depth" would take him to one or the other.

Lafon's survey shows that the lower line goes to the lake, and the upper to the river.

But we have contemporaneous explanations, showing that the depth was considered to extend thus far. This grant was claimed and possessed under the Spanish government with a great depth, though what this was, was not precisely ascertained until an actual survey was made. This evidence is contained in Senate Document of 1838, pp. 21 to 29.

On the 5th of March, 1778, less than a year after the grant, and within nineteen months of the operations of Andry, Maurice Conway sold a portion of this land to Oliver Pollock by notarial act. He sold 36 arpents of the front of it, with the depth, "*to the lake.*" (In the Spanish sale, on page 21 of the foregoing document, there is a misprint in the 4th line, to wit: el fondo hasta el *lado*, instead of el fondo hasta el *lago*. Lado means *side*, and lago *lake*. The misprint is apparent from the remainder of the sale.) He states, when he purchased the land jointly with Latil, that he bought the other half of it from Alexander Latil on the 4th of January, 1776; that, in the first of these sales, it was stated that the land had only half a league in depth; that he had applied to the governors of the province, Unzaga and Galvez; that the former authorized Don Louis Andry to go to the district of Lafourche, which is the place where said land is situated, and to give to him (Conway) possession of what more land he wanted, besides what he had purchased; that Andry having done so, on the 9th of October, 1776, he measured the said land in his (Conway's) presence, from the boundary of François Duchan to that of Michel Chiasson, and he found that it contained 96 arpents in front, and a *depth to the lake*, and as I (Conway) had purchased only forty arpents, he, (Andry,) by virtue of the above-mentioned order of Don Louis de Unzaga, put me in possession of the whole remainder, as *far as the lake;* all which was approved by Don Bernardo de Galvez on the 21st of July, 1777. And as I have the right and power to sell, I hereby sell to the said Oliver Pollock the said 36 arpents in front in this wise, viz: 21 arpents in front, with the *above-mentioned depth*, bounded on both sides by me,

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the vendor, for the sum of $2,000, and 15 arpents front, *with the same depth*, also bounded on one side by me, the vendor, and on the other by Gabriel Peró, for $1,500, which make together $3,500; and I declare that this is the just price and full value of the aforesaid 36 arpents, *with the above-mentioned depth;* and the said Pollock declares that he accepts the sale of the aforesaid 36 arpents, "*with the above-mentioned depth.*"

The preceding extract is a translation of all that is in the slightest degree material in that sale.

It is obvious that what Maurice Conway then says of Andry's operations, is less a statement than an explanation of the meaning and purposes of Andry's proceedings. Andry does not in his *procés verbal* speak of the lake, nor does he describe the depth of which he had given possession, in any other manner except as the depth "granted to him (Conway) by the foregoing decree" of Unzaga. Andry had his doubts where the prolongation of the side lines would touch a considerable water-course; he was not well acquainted with this section of country, nor could he have traced these lines in a day or a week, or without receiving more pay than the whole rear land was worth. But there is no doutb that both he and Maurice Conway understood that it would go to the first considerable water-course or lake, such being the depth of the larger grants between the river and those lakes. Maurice Conway assumed that it would reach the lake, and he was right as to one, and wrong as to the other line. A large anterior claim in this immediate vicinity goes from the Mississippi to Lake Maurepas, and the Amite. This is the claim confirmed in the name of John McDonogh. (See Public Lands, vol. 3, p. 254.)

The declarations contained in this sale are perfectly unsuspicious. It was made in a notarial act passed in New Orleans, which was, according to the practice of the civil law, open to the inspection of every one; and when it is recollected what a small community New Orleans, and even all Lower Louisiana then was, how few transactions then took place, how everybody's business was known to everybody, it would be absurd to suppose that Conway would have ventured to state a deliberate falsehood over his signature in the presence of Andry and Galvez. He could have had no possible object in doing so, for if it had been necessary he would have gone to the expense of a measurement of the side lines; he could have obtained from the governor an explanation, inserting into his grant whatever he might have found to be the true distance of the side lines. And he would have appeared contemptible if he had designedly misrepresented in an authenticated and public act what everybody knew to be the local custom and understanding.

So, also, after the death of Maurice Conway, when William Conway, his heir and executor, found it necessary to execute a mortgage in favor of James Mather, who had become security for one of Maurice Conway's debts, he gave that mortgage on a part of the Houmas grant, which still belonged to Maurice Conway at the time of his death, and had been adjudicated to William Conway. In the notarial act of mortgage, which was passed on the 5th of February, 1795, (p. 23 of Senate Document of 1838,) he describes this land as having ***thirty arpents front by a depth to the lake.***

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It does not appear that under the Spanish government any objection was ever made to this depth claimed for the Houmas grant. On the contrary, the fact that a very great though not accurately defined depth was claimed for this grant was brought home, directly and distinctly, to the very head of the land department of the government, who had the exclusive right to grant land, and to regulate all matters appertaining to the land system—to Morales, the intendant. And he received this claim not with animadversion, but with assent. (See Senate Journal of 1838, p. 24.) We there find the extract from the last will and testament of G. A. de St. Maxent, in the 18th article of which it is declared that he was the owner of a plantation called the "Houmas," at about eighteen leagues from the city of New Orleans, which he had purchased for the price of $6,000 from Maurice Conway, about seven years ago, measuring eighteen arpents in front by *upwards of four leagues in depth*.

"Upwards of four leagues in depth" is still indefinite, but clearly shows that Maxent considered himself entitled to a great depth. He may, during a dry season, in hunting excursions, have gone to a distance into the woods, which he approximately estimated as being in a direct line, at least four leagues from his front, and not having at that distance encountered such a water-course as, according to the usage, was the boundary of such a claim, he concluded that his land must have a greater depth than that distance. He was not very far from the truth as regards the central, the Clarke portion of the claim; for the sides lines of this are now ascertained to be, one thirteen, and the other fourteen miles in length, and four leagues are nearly thirteen miles. The thing, however, which this declaration conclusively proves is not that the land had that precise or any precise depth, but that Maxent wrote under the impression produced by the well known usage.

That this declaration, made in a will, in the solemn hour when he was settling his account with this world, without the possibility of being influenced by interest, is entitled to the weight of contemporaneous evidence of the common understanding of a well known usage, is self-evident.

After the death of Maxent, his will, and all the judicial proceedings relative to his estate, passed under the eye of J. V. Morales, the intendant of the province, acting at the same time in a judicial capacity, and of the licentiate, (a title nearly equivalent to doctor of laws,) Manuel Serrano, the assessor of the intendency, that is, the legal adviser, the solicitor of the treasury of the government. These high law-officers signed all the orders issued in the settlement of the estate, sometimes with their names in full, and sometimes with their flourishes or paraphs. In Spanish countries each official adds to his signature a flourish, which is as well known as his signature, and supposed to be more difficult of imitation. Often they sign with their flourish alone, and then it is called a "half-signature." In Spanish bills of costs the charge for a half-signature is something less than for a full signature.

These two officers then ordered the appraisement of the land of the Houmas, and its sale for cash, provided it brought more than two thirds of its appraised value. (Page 24 of Senate Document of 1836.) By the law of Spain, a judicial sale was first made for cash; but if the

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property did not bring two thirds of the appraised value, it was offered again on credit. Such is still the law of Louisiana.

This order was addressed to Evan Jones, the commandant of the post of Lafourche, and as such the local judicial officer. He recommends, on the 1st of August, two persons to act as appraisers; on the 3d of the same month, Morales and Serrano appoint them, and then these persons make and return their appraisement. They say that they are well acquainted with the Houmas lands belonging to the estate of the late Colonel Gilbert Anthony de St. Maxent; that the tract measures about twenty-nine arpents in front by *upwards of four leagues in depth;* that the same is now uninhabited, without any buildings or improvements whatever, and they appraise it at $2,400.

Thereupon, Morales and Serrano order that this appraisement be shown to the printer, and that the printer advertise the property to be sold on the 13th of the same month, at the intendant's house.—(Page 25.)

The printer accordingly advertised it in the Gazette. On page 29 will be found the French original, and on page 26 a translation of this advertisement, in which the property is advertised as "*a* (tract of) *land twenty-nine arpents in front by about four leagues in depth;* at the place commonly called Houmas, belonging to the estate of the late St. Maxent, appraised in the inventory at $2,400.

But immediately after having given the first order of sale, which directed the property to be sold at the intendant's house in New Orleans, Morales and Serrano, amended this order, and gave a new one, (p. 26,) which sets forth that, whereas the previous decree was to be executed only if Evan Jones, the commandant of Lafourche, should have been unable to sell said *lands*, an order was directed to him to proceed to said sale for cash, but not for less than two thirds of its appraised value, *to pay the sum due for the making of the levee*, and that the balance of the proceeds should be forwarded "*to this tribunal.*"

In compliance with this order, Evan Jones, the commandant, sold this tract of land at auction on the 12th of August, and it was adjudicated to Louis Faure, the highest bidder, for $1,650, this being $50 more than two thirds of the appraised value.—(Page 26.)

In the report of this adjudication, the land is described as follows: "The said land situate at the Houmas, belonging to the estate of the late Colonel Anthony Gilbert de St. Maxent, measuring twenty-nine arpents in front, *by the depth which could be found*, opening about thirty-six degrees."

We have already abundantly shown, *that the depth which could be found,* was an expression applied only to lands which had more than the ordinary depth—which had such a depth as could be ascertained only by an actual survey not yet executed. This was indeed more exact than the designation of "upwards of four leagues in depth." It gave at once to understand that a survey was requisite to know the real depth, and that that depth would depend upon a water-course.

It is important to observe that this was a judicial sale, ordered to pay for the levee which had been made in front of the land. It is well known that lands on the Lower Mississippi can be cultivated only if protected by a levee, and that the levees had to be continuous, for oth-

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erwise the water would have gained on the plantations from behind. The Spanish government imposed upon each front proprietor the obligation to construct and maintain the levee in front of his land, and if he neglected it the government had the levee made, and the land was seized and sold to pay for it.

In a judicial sale such property passes as is advertised. Here the advertisement gave to the land "upwards of four leagues in depth." How much more could only be ascertained by extraneous evidence. But four leagues passed at all events, and certainly.

Now this description was contained, as has been shown, in several proceedings which were submitted to Morales, and on which he made orders. The very unusual phrase, "upwards of four leagues in depth," must have attracted his notice. He must be presumed to have read what he signed. The consistent declarations of St. Maxent, who was a colonel of the local militia, of Evan Jones, the commandant, of Morales, the intendant, and Serrano, the assessor of the appraisers, &c., must be looked upon as conclusive evidence of the existence of a local custom, according to which those expressions had a well-defined meaning. Could the purchaser, under such an order and advertisement, afterwards have been disturbed by Morales, as the head of the land department, when he, as chief judge, had ordered that sale? "The power of granting the public domain was in Morales, who resided in New Orleans."—(Les Bois *vs.* Brammell, 4 How. R., 449.)

But this is not all. On another occasion, the attention of Morales was drawn to the depth of the Houmas claim in a very special and emphatic manner; this very depth being the gist of an especial communication.

St. Maxent, at the time of his death, owned two tracks of land in the Houmas claim. In his will (p. 24) he speaks of one only; but the evidence in the Senate Document of 1838 does not inform us how long before his death that will was made. One of these two tracts was the plantation of 18 arpents front by a depth of upwards of four leagues, mentioned in the will. The other was the tract of land to which the above-mentioned proceedings relate. The latter had *twenty-nine* arpents in front by upwards of four leagues in depth, was uninhabited, and without any buildings or improvements at the time of St. Maxent's death, and was appraised at $2,400, and sold to Louis Faure for $1,650. The other was the "plantation" of St. Maxent, mentioned in his will. It had only 18 arpents front on the Mississippi, by upwards of four leagues in depth. It is to this latter property that the petition of P. Marigny refers, which is found on page 27 of the Senate Document of 1838. P. Marigny, who styles himself the syndic of the creditors of Colonel Gilbert de St. Maxent, represented to the intendant that, according to an official letter which had been addressed to him (the intendant) by Michel Cantrell, commandant of the post of Cabahanoce, the *plantation* belonging to the estate of St. Maxent, situated in the post of Lafourche, and commonly called the Houmas, could not be sold, because, although it had been several times offered at auction only $1,500 had been offered for it; that the said plantation had been appraised by three appraisers, at $4,500; that perhaps the reason why a higher price than $1,500 had not been offered for it, was that the peo-

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ple were ignorant of the depth belonging to said plantation, which St. Maxent stated, in his will, to be upwards of four leagues; that, therefore, the bids were not in proportion to the value *which that depth must give to the plantation.* Wherefore he prays that an order may be addressed to Michel Cantrelle, containing this representation, and the intendant's decree thereon, that the sale may be postponed until August next; that circulars may be sent to the neighboring posts to receive bids, "*and informing every one of the depth which belongs to said plantation.*" And thereupon the order was given, "Let it be done as prayed for," and signed by the paraphs of Morales and Serrano.

Thus this claim was notoriously made ever since 1778, forced upon the notice of the public officers, and never questioned. Under this claim the grantee and his assigns had a possession of twenty-six years under the Spanish government, which claim would suffice to protect them; for, under the Spanish law, the domain could be acquired by the prescription of ten years. (See the decisions of the supreme court of Louisiana in Sanchez *vs.* Gonzalez, 11 Martin R., 210; Pepper *vs.* Dunlop, 9 Ann. R., 141.) And this is incidentally recognized by the Supreme Court of the United States, in Mitchell *vs.* The United States, 9 Pet., 760. This provision of the Spanish law is the source of the most important enactment contained in the second section of the act of the 3d of March, 1807, by which persons who were, on the 20th of December, 1803, (the day when Louisiana was delivered to the United States,) and had been for ten consecutive years prior to that day, in possession of a tract of land not exceeding two thousand acres, were confirmed in their titles to said land.—(1 Lou. Laws, 153.)

The terms of this act show that "their titles" were their possession—it was unnecessary to show anything else; and a vast number of claims, of which the original titles were lost, or difficult of access, were confirmed under that section.

The restriction to 2,000 acres was owing to the doubts which at that period were entertained concerning the authority of the governors and the usages and customs of the colony—doubts which have since been dispelled by the Supreme Court of the United States.

The difference between the easy and loose manner in which the Spanish government acted in regard to its domain, and the mathematical precision of the American government in the management of its public lands, is indeed so radical, that minds thoroughly familiar with the latter are with difficulty brought to realize the totally dissimilar aspect in which transactions must be viewed under the two systems. The rule, and the only safe, just, and rational rule, is to investigate how the Spanish government would have considered a claim. What that government would have done, the United States are now bound to do in relation to these old claims. That obligation is greatly increased in proportion to the length of time that has elapsed before the United States finally acted, and the unavoidable disappearance of much of the evidence. Measured by that test, we can safely say that in the history of all the Spanish grants in Louisiana, which are contained in the records of the different boards of commissioners, and form no uninteresting or unimportant part of the ante-Ame rican history of Louisiana, not a single incident is to be found fromwhich the most,

remote inference could be drawn, that such a claim as ours, accompanied by constant residence upon the grant, would ever have been questioned.

Respectfully submitted.

LOUIS JANIN.

APPENDIX.

GENERAL LAND OFFICE,
February 28, 1860.

SIR: I have to acknowledge the receipt of your letter of 17th instant, in which you desire an answer to the following questions:

1st. "Assuming the case of a *complete* grant, derived from the Spanish government, which never was filed in or acted upon either by a board of commisioners or by a court of the United States, having authority to decide on Spanish land grants, has any such grant, under the above-mentioned circumstances, ever been held by the General Land Office entitled to a public survey and to a patent, and has the land embraced within it been withheld from sale, and treated as private property?"

2d. "Or have not all lands in Louisiana been treated as public property, unless the title thereto was established before a board of commissioners, or a court of the United States?"

Whilst this office desires to avoid answering all speculative inquiries, we have no objection in the present case to reply to your first interrogatory in the negative, and to the second in the affirmative.

Very respectfully, your obedient servant,

JOSEPH S. WILSON,
Commissioner.

LOUIS JANIN, Esq.,
Present.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 151.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1860.—Ordered to be printed.

Mr. CLARKE made the following

REPORT.

[To accompany Bill S. 308.]

The Committee on Indian Affairs, to whom was referred the memorial of Seth Eastman, respectfully report:

On the 27th of February, 1850, the memorialist, then a captain in the United States army, was detailed by the Secretary of War for the illustration of the History of the American Indians, then being prepared under the direction of the Indian department.

This "assignment was made at the request of the Commissioner of Indian Affairs, in view of his peculiar qualifications for that particular service," and "for the purpose," as appears by a communication from that officer, "of preparing for the engraver of the book drawings taken from paintings made by him whilst at Fort Snelling."

Prior to this time he had been stationed in the Indian country, and had made himself acquainted with their habits, customs, and modes of life.

He was an artist, and had employed much of his leisure time and limited means in perfecting himself in his art, and in procuring materials, making sketches and drawings to illustrate a work of his own upon the Indians, which he then contemplated publishing.

When detailed for the illustration of the government work, he devoted not only himself, his art, and skill, but his materials, and the former products of his art to that purpose.

He was then the owner of sixty-seven paintings and sketches, which were afterwards engraved, and formed some of the most pleasing and valuable illustrations of the respective volumes.

For each engraved plate of these sixty-seven pictures and sketches so prepared by the memorialist before he was detailed for the work, and for some other pictures and sketches prepared by him afterwards, the government paid the engraver three hundred and twenty-five dollars.

The memorialist continued upon the illustration of this work from March 1, 1850, to April, 1855; and when he appropriated his materials and the former products of his art to that purpose, he supposed he

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would be paid therefor, although he was told there was no appropriation then made, out of which payment could be paid.

How well he performed the duty imposed upon him appears from the following extract from a communication from the Commissioner of Indian Affairs to the Secretary of War.

"The opinion, as expressed, was, that from his peculiar fitness to such a task, from talent, taste, and an intimate knowedge of the customs, habits, and characteristics of the Indians, from having long dwelt among them, and from the large amount of material collected by him when serving on the frontiers, the public would sustain a serious loss were he taken from the work, and his place could not with any degree of probability be supplied without considerable expense to the government; and it was earnestly hoped that the Secretary of War would not insist upon his being *relieved* until the completion of the volume then in progress."

In April, 1855, the memorialist finished the illustration of the history of the Indians, and returned to his duty as an officer in the army.

The engraved plates of his pictures and sketches remained in the custody of the government, and he received nothing for the use of his pictures and sketches, or for the peculiar talent, art, and skill, which he had employed upon the work, except his ordinary pay as an army officer.

Thus matters remained until the act of January 25, 1859, for the relief of Mrs. Henry R. Schoolcraft. By that act, the Secretary of the Interior was "required to cause a copyright to issue, securing to Mrs. Henry R. Schoolcraft, to her heirs, assigns, and legal representatives, the exclusive right to republish the book entitled 'History, Statistics, Condition, and Prospects of the Indian Tribes of the United States,' heretofore published under order of Congress, and to make and publish any abridgment or compilation thereof, for the term of fourteen years from the passage of this act; and he is further required to transfer and deliver to said Mrs. Schoolcraft all the plates, the property of the United States, used in the printing and illustration of said book."

By the operation of that act the copyright of those pictures and sketches, which the memorialist made before he was detailed for the illustration of the work, and which belonged justly to him, was secured to Mrs. Schoolcraft, and he is debarred from the use of them in any work he might wish to publish, or subjected to unpleasant litigation.

He was absent in Utah at the time of the passage of the act for the relief of Mrs. Schoolcraft, and knew nothing of its provisions until long afterwards.

He now asks that he may be paid for the property of his which Congress has transferred to another, or of which the value has been greatly impaired by the act of January 25, 1859; and the committee think it just this should be done.

In determining the value of that property, the committee have found no certain guide, but they have considered the estimate they have put upon it a low one, to-wit: seventy-five dollars for the copyright of each of the sixty-seven pictures, making the sum of five thousand and twenty-five dollars; and they report a bill for that sum.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 152.

IN THE SENATE OF THE UNITED STATES.

MARCH 23, 1860—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany bill S. 309.]

The Committee on Naval Affairs, to whom was referred the petition of Charles J. Swett, have had the same under consideration, and report:

This case was before the Committee on Naval Affairs in the Thirty-fourth Congress and favorably reported upon, which report your committee beg leave to adopt, and is as follows:

IN THE SENATE OF THE UNITED STATES.—FEBRUARY 17, 1855.

The Committee on Naval Affairs, to whom was referred the memorial of Charles J. Swett, praying compensation as purser during the time he served as such on board the San Jacinto, have had the same under consideration, and report:

That the petitioner has been attached to the naval service of the United States, under appointments sanctioned by various officers in command, as purser's clerk, since 1842. That, on the 28th November, 1851, he was duly appointed, with the sanction of Captain Thomas Crabbe, to that station on board of the steamer San Jacinto, of which William A. Christian was the purser. That he entered upon his duties at New York on the 1st of December following, and continued faithfully to discharge them during the voyage of that steamer up the Mediterranean and while in that sea, until the 6th of October, 1852, when his said commanding officer, Captain Crabbe, appointed him an acting purser. This appointment was occasioned by the following circumstances: Purser Christian, in consequence of serious ill-health, was, on the 4th of August, 1852, by the orders of Commodore Silas C. Stringham, detached from the San Jacinto to return to the United States.

He left the frigate on the 7th of August, 1852, leaving in charge of the petitioner the public property and the official accounts of his department. The petitioner entered and performed the trust and responsibilities incident to this new position, and, agreeably to instructions, discharged all the duties of purser in the name of Mr. Christian, waiting the arrival on board of the San Jacinto of such officer as might be appointed by the Navy Department to relieve that gentleman. On the

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6th of October following, Captain Crabbe, while at Trieste, having been duly informed of the death of Purser Christian, deemed it necessary and expedient to give to the petitioner the acting appointment he has mentioned; and he, of course, thereupon and in consequence thereof resigned his clerkship. In obedience to orders, dated October 11, 1852, an inventory of stores and moneys having been taken by a board of officers, the petitioner closed the accounts of the deceased Purser Christian and took into his own custody the public property. The petitioner thenceforward, to the 30th of November following, fulfilled all the duties of purser. On this last date, Mr. John B. Rittenhouse having been, by order of the Secretary of the Navy, attached to the frigate San Jacinto, as purser, and having reached the ship on that day, the acting appointment of the petitioner was revoked; and, in compliance with orders, he transferred the whole charge to Mr. Rittenhouse.

Your committee, from information received from the Navy Department, find that the petitioner received pay as purser's *clerk* from the 7th of August, 1852, to the 6th of October, 1852; and that, although he held the appointment and discharged the duties of acting purser from the 6th October, 1852, to the 30th November, 1852, he received no pay therefor, "on the ground that he could not be appointed a purser except by the President and Senate."

Your committee, for the reasons above stated, deem the claim an equitable one so far as pay as acting purser, from the 6th of October to the 30th of November, 1852, is concerned, and report a bill accordingly.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 153.

IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1860.—Ordered to be printed.

Mr. POWELL made the following

REPORT.

[To accompany Bill S. 310.]

The Committee on Pensions, to whom was referred the petition of Mary J. Maltby, praying to be allowed a pension as widow of Lieutenant James West, of the United States army, beg leave to report:

It appears, from the evidence of Colonel D. S. Miles, United States army, and others, that Lieutenant James West, 7th infantry, U. S. A., was stationed at Fort Gibson, Cherokee country, in May, 1834, and that during that month he was detailed to accompany General Leavenworth in the field, on his staff, as topographical officer, on an expedition to the Wachita mountains and Kioways country. The hardships and exposure of that campaign are historical. The general commanding died in the field, (and his widow, by special act of Congress, has been allowed a pension.) About the 15th of September, Colonel Dodge, commanding the 1st regiment of dragoons, marched into Fort Gibson with the shattered remnant of the deceased general's troops, many of whom had died and very many sick; among the number Lieutenant James West was brought in on a litter, sick, and was confined to his bed until the 28th of September, 1834, when he died.

There is no doubt but that Lieutenant West died of disease contracted in consequence of exposure and hardship in this expedition, in the faithful discharge of his duty in the field. Had he been an officer of the navy, and his death had occurred in the manner in which it did, from disease contracted in the line of his duty, his widow would have been entitled to a pension under the general law.

The petitioner, at the time of her husband's death, was left in extreme poverty, with an infant son, dependent on a widowed mother for the support of herself and the education and support of her infant son. She remained a widow eleven years. In 1845, she married T. D. Maltby. It appears that said Maltby, the present husband of the petitioner, in consequence of wounds received whilst gallantly fighting the Indians of Texas at the head of a volunteer company, is so incapacitated by bodily infirmity as to be unable to provide for his comfortable support. The petitioner applied to Congress during her widowhood

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for a pension; having married during the pendency of her application, the prayer of her petition was denied.

Hon. Jefferson Davis, of the Senate, who was in the expedition in which Lieutenant West contracted the disease of which he died, is referred to.

This appears to your committee to be a meritorious case; the petitioner is in great poverty, her present husband, in consequence of wounds received in battle with hostile savages, as a volunteer soldier, is unable to support her; her condition, so far as support and maintenance is concerned, is no better than it was in widowhood.

We report a bill for her relief, and ask its favorable consideration.

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IN THE SENATE OF THE UNITED STATES.

MARCH 26, 1860.—Ordered to be printed.

Mr. HEMPHILL made the following

REPORT.

[To accompany Bill S. 311.]

The Committee on Claims, to whom was referred the memorial of Colonel William Gates, praying indemnity for losses sustained by the destruction of his property on board the steamship San Francisco, has had the same under consideration, and reports:

It appears that the memorialist, a colonel of the third regiment of United States artillery, was ordered by the general-in-chief of the United States army, in the year 1853, to proceed with a portion of his regiment to California. The steamship San Francisco having been chartered by the government for the transportation of the troops, the memorialist, with six companies of his regiment and some recruits, embarked on board the ship at New York, on the 21st of December, 1853. Expecting, from the character of the service and the nature of the preparation made by the department for the transportation of the troops, that they would remain for a considerable period of time in the west, the officers and men were induced to provide an unusually heavy outfit. The officers were accompanied by their families, and took with them household furniture and goods, in view of a protracted stay, and the difficulty of obtaining such articles in the west.

That this was reasonable and proper, will appear from the following extract from a letter of Assistant Adjutant General Thomas to the quartermaster general in relation to the chartering of a vessel for the conveyance of the troops:

"General: In inclosing herewith General Order No. 2, I am instructed by the general-in-chief to request that you will please give such instructions to the officer of your department, in this city, in relation to the transportation to be furnished the troops ordered around the Horn to the Pacific division, as will cause an ample allowance to be provided.

"This is required, both on account of the length of the voyage (passing twice under the equator) and the peculiar state of affairs in California, and the probable length of service of the regiment in that

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country, which makes it desirable for the officers and men to be able to supply themselves with a large outfit at this place.

"The troops will carry with them not less than nine months' subsistence, and if the capacity of the vessel will admit, twelve months of everything but breadstuffs."

As another indication in the same direction, it may be mentioned that the troops were allowed six months' pay in advance. The steamer was chartered for this especial service, and was not allowed to take any freight, and only the necessary amount of ships' stores, in order that the troops might have ample room for their baggage and stores.

On the 22d December, 1853, the San Francisco sailed from New York with the troops on board, and, on the 24th December, encountered a severe storm, followed by a succession of gales during four days. The steamer became disabled, and a wave breaking over her, washed overboard about one hundred and twenty-five officers and men. To save the ship, the master ordered most of the stores to be thrown overboard, and by this course the vessel was kept afloat. Other vessels afterwards hove in sight, and, coming to their assistance, most of the remaining passengers were taken from the wreck and conveyed safely to port. But the steamer itself, and all the materials on board of her, were abandoned and lost.

Your memorialist had on board, as he alleges, all of his personal property, a schedule of which is furnished, and which he affirms to be correct to the best of his knowledge and belief. The value of the whole is estimated at $8,460 50, and for their loss he prays to be indemnified.

Your committee find that in the case of the steam frigate Missouri, which was burned in the harbor of Gibraltar on the 26th August, 1843, when the crew lost all their clothing, &c., that bills for the relief of the officers and men twice passed the Senate; that the case was favorably reported on in the House during the first session of the Twenty-ninth Congress, (Rep. No. 597,) but was never acted on in the House, although the President, in his next message after the disaster, called the attention of Congress to the matter, and suggested the propriety of reimbursing the amount of their losses. The Hon. Caleb Cushing, on his way to China as minister from this government, was on board the steamer at the time of her destruction, and in a letter to the Secretary of the Navy, speaks in the highest terms of the gallantry of the crew neglecting their own property in their strenuous efforts to save the property of the government. He adds that he is informed that there is "a permanent regulation in the British Navy for the relief of both officers and men under such circumstances."

Your committee, after careful examination, has found no case exactly similar to that of your memorialist in which Congress has furnished relief. The bill which has passed for the relief of the officers and men at Fort Delaware, which was burnt on the 8th of February, 1831, is the nearest approximation to the present case which they have been able to find. (Statutes at Large, vol. 6, p. 512,) "*Be it enacted, &c.*, That the Second Auditor of the Treasury be, and he hereby is, authorized and required to ascertain the amount of property lost by each officer and soldier in the conflagration which occurred at Fort Delaware on the night of the 8th of February, 1831, and the amount so

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ascertained shall be paid out of any money in the treasury not otherwise appropriated."

Soon after the wreck of the San Francisco a call was made by the Senate on the Secretary of War for information in regard to the nature and extent of the relief required by the calamitous condition of the troops on board the San Francisco. The Hon. Jefferson Davis, then Secretary of War, replied that, in his opinion, an act similar to that quoted above, in the case of the officers and men at Fort Delaware, "would be a proper measure in this case."

Your committee, in view of all the circumstances of this case, is disposed to recommend it to the favorable consideration of Congress, and report the accompanying bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 155.

IN THE SENATE OF THE UNITED STATES.

MARCH 27, 1860.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Bill S. 313.]

The Committee on the District of Columbia, to whom was referred the petition of certain property-holders in Washington city, praying the passage of a law to remunerate owners of property for damage sustained by changing the grades of the streets and avenues of that city, ask leave to report, as follows:

The complaints of the petitioners have been fully heard in the circuit court of the District of Columbia and in the Court of Claims, and have been reviewed by the Supreme Court of the United States, and uniformly dismissed as affording no legal claim for damages.

Anne C. Smith commenced an action before the circuit court for the District of Columbia, against the corporation of Washington, for alleged damages occasioned to her property by the grading of a street. The court dismissed the complaint, and the plaintiff appealed to the Supreme Court, and at the December term, 1857, that court affirmed the decision of the court below.—(See 20 Howard, page 135.)

John L. Wort complained to the Court of Claims that his property on North Capitol street had been damaged by the grading of that street, and as it had been done by order of Congress, he claimed indemnity from the United States. That court, in May, 1858, dismissed the complaint without taking testimony, affirming that, allowing all the petitioner said to be proved, it furnished no grounds for damages against the United States.

Charles Wilkes made a similar complaint and with like result, at the May session, 1858, of the Court of Claims. The committee append the opinion of the court on Wort's case.—(See appendix.)

Concurring in the conclusions of the court, we think that the petitioners in this case have no legal claim against the United States for damages.

Their equities, we think, are different. It will be recollected that the Government sold the ground to these petitioners, or to others from whom they derive their titles. This it did under what we regard as a stipulation that the streets were to be graded according to a then existing survey of the city. It is clear that if the survey had not been

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changed, or the grades altered, the purchasers would have had no legal or equitable claim for damages. But the government did, in many instances, alter the grades, and in a way seriously to injure the lots of ground which it had sold to private parties; and having done so, we think that it is equitably bound to hold itself responsible in damages. In accordance with this view of the subject, we report a bill.

APPENDIX.

IN THE COURT OF CLAIMS.

JOHN L. WIRT *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

The petitioner states the following case: He is the owner, in fee simple, of lot No. 3, in square No 685, in the city of Washington. The lot is situated on the east side of North Capitol street, in that city.

The grade of North Capitol street was fixed by the proper authority as long ago as the year 1789. It was duly laid down and recorded by Nicholas King, at that time the surveyor of the city.

Notwithstanding this grade was thus fixed and established, the Commissioner of Public Buildings, in 1824, caused North Capitol street to be cut down in order to procure earth to make the roadway around the Capitol square. He thus destroyed the original fixed grade and formed another, which the petitioner supposed was to remain as the established grade of that street. He was so informed by the surveyor of the city in the year 1842 or 1843, about which time the petitioner erected a dwelling-house on his lot, at what he was thus officially informed was the then fixed grade of that street.

About the years 1850 and 1851, a further excavation was made by the United States in North Capitol street for the purpose of procuring earth to improve Maryland avenue, and to obtain gravel and sand for Twelfth street west, reducing the grade in front of the petitioner's house so much as greatly to damage his property.

In the year 1855 a further excavation was made by the same authority in North Capitol street for the purpose of procuring earth to fill up the public reservation north of the Capitol square. The grade was then reduced to its present level, which, the petitioner is informed, is the grade fixed by Randolph Coyle, United States engineer, appointed by law "to complete and revise the grades of the city of Washington, under the direction of the President of the United States." The petitioner's house is now far above the present grade, and very seriously damaged.

The petitioner will show that the said injury and damage have been done by the authority of the United States, and under color and pretext (and, as the petitioner believes, in fact and truth) that the same was necessary for the public use and benefit; and he submits that he is entitled to ask and receive a just compensation for the value of his property thus taken away from him. The petitioner has, as often as

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it became necessary, duly protested to the proper authorities that he held the United States liable, and bound to make good to him all his damages in the premises. He submits that there is an implied contract on the part of the United States to compensate and indemnify him fully in the premises; upon which implied contract (waiving any demand for a tort, if any he have) he now relies.

The petitioner states the action of Congress in his case. It was referred to this court by the House of Representatives.

Such is the petitioner's case, as set forth by him in his petition; and the question now to be determined is, whether testimony shall be ordered.

In the case of Anne C. Smith *vs.* The Corporation of Washington, (not yet reported,) the Supreme Court held, that the power given to the corporation of Washington in their charter, "*to open and keep in repair* streets, avenues, lanes, alleys, &c., &c., agreeably to the plan of the city," includes the power to alter the grade or change the level of the land on which the streets, by the plan of the city, are laid out; and that when they perform this trust, according to the best of their judgment and discretion, without exceeding the jurisdiction and authority vested in them as agents of the public, and on land dedicated to public use for the purpose of a highway, they do not act unlawfully or wrongfully. "They have not," says the court, "trespassed on the plaintiff's property, nor erected a nuisance injurious to it, and are, consequently, not liable to damages where they have committed no wrong, but have fulfilled a duty imposed on them by law as agents of the public. The plaintiff may have suffered inconvenience and been put to expense in consequence of such action; yet, as the act of the defendants is not 'unlawful or wrongful,' they are not bound to make any recompense. It is what the law styles '*damnum absque injuria.*' Private interests must yield to public accommodation; one cannot build his house on the top of a hill in the midst of a city and require the grade of the street to conform to his convenience at the expense of that of the public.

"The law on this subject is well settled, both in England and this country."

The same principle had been decided in the case of Goszler *vs.* The Corporation of Georgetown, 6 Wheaton R., 593. But it is supposed that it goes no further than merely to exempt from liability to action the corporations who exercise such a power. But this is a mistake. In such cases the principle that private property shall not be taken for public use without just compensation is inapplicable. That principle has always been confined, in judicial application, to the case of property actually taken and appropriated by the government. It does not extend to indirect or consequential damage or loss occasioned by the lawful use of property already belonging to the public. (Callender *vs.* Marsh, 1 Pick. R., 418.) And such is the doctrine in the case of Anne C. Smith *vs.* The Corporation of Washington.

A similar principle prevails in reference to the rights of co-terminous owners of land. A man has the right to dig a pit upon his own land, if necessary to its convenient or beneficial use, when it can be done without injury to the land of his neighbor *in its natural state.*

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His right to dig the pit is but the right to improve his own land, and his neighbor cannot deprive him of this right by the erection of a building, the weight of which will cause his neighbor's land to fall into the pit. The doctrine upon this subject is, that in all cases in which the owner of land has not, by building or otherwise, increased the lateral pressure upon the adjoining soil, he has a right to its support, as a right of property necessarily and naturally attached to the soil. But where anything has been done to increase the natural pressure, as where buildings have been erected, no man has a right to such increased support, unless the building or other thing, which makes it necessary, is of *ancient* erection. Hence, a person may make reasonable improvements and excavations on his own land, though they should injure or endanger an edifice on the adjoining land by digging near and deeper than its foundations, provided he exercises ordinary care and skill, and the suffering party does not possess any special privileges protecting him from the consequences of such improvements, either by prescription or grant.—(Thurston *vs.* Hancock, 12 Mass. R., 221; Panton *vs.* Holland, 17 Johns. R., 92.)

In the city of Washington, the land on which the streets are laid out belongs to the United States in fee simple, and the streets are highways, which have been dedicated to the public. The power to regulate them is vested in Congress, to be exercised directly, or by such individuals or corporations as may be authorized by Congress. They may repair and amend the streets, and, for this purpose, dig down and remove the soil sufficiently to make the passage safe and convenient; and in doing so, they but exercise a power analogous to that which an individual exercises in making an improvement on his own land. Hence, any consequential loss which may result to an individual from the proper exercise of this power is "*damnum absque injuria.*" For this reason, every one who purchases a lot upon the summit, or on the decline of a hill, is presumed to foresee the changes which public necessity or convenience may require, and may avoid or provide against a loss.—(Callender *vs.* Marsh, 1 Pick. R., 431.)

In the present case, the petitioner complains of two several changes which have been made in the grade of North Capitol street by authority of the United States, and he alleges that his house has been "very seriously damaged" thereby, but he concedes that the changes were "necessary for the public use and benefit." This, in the language of the court, in the case of Smith *vs.* The Corporation of Washington, "is what the law styles '*damnum absque injuria.*' Private interests must yield to public accommodation; one cannot build his house on the top of a hill in the midst of a city and require the grade of the street to conform to his convenience at the expense of that of the public."

In the case of Callender *vs.* Marsh, 1 Pick. R., 433, the court say: "Cases apparently hard will occur; the present is such a one. The plaintiff's house has been standing twenty years, and he had reason to expect that in any contemplated improvement in the streets his liability to expense would have been attended to by the city authorities. * * * * * It may be a case very suitable for the consideration of the city authorities, whether, according to the practice in like cases of

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improvements designed for the general good, necessarily creating expense to individuals, some fair indemnity ought not to be allowed; but of this they are the judges. If it is not now within the authority of the city officers, it is certainly worthy of consideration whether an application to the legislature ought not to be made to authorize them to indemnify those citizens who may, in the necessary exercise of powers used for public improvement or convenience, be made indirectly to contribute an undue proportion for those purposes; and there seems to be no good reason why others, whose property is enhanced in value at their neighbor's expense, should not be held to furnish part of the indemnity." It may be that this case, too, is one of hardship; but upon this point we can give no opinion. It has been submitted to us merely upon the petition, and our opinion is, that the facts therein set forth do not furnish any ground for relief.

No order will be made authorizing the taking of testimony in this case.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 156.

IN THE SENATE OF THE UNITED STATES.

MARCH 28, 1860.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany Bill S. 317.]

The Committee on Foreign Relations, to whom was referred the memorial of Isaac E. Morse, praying additional compensation as special commissioner to New Granada, have had the same under consideration, and report:

The memorialist was appointed by the government as special commissioner to New Granada, and entered upon the discharge of his duties on the 7th of November, 1856.

He appears to have returned to the United States on the 28th of April, 1857, and to have made a final settlement of his account on the 20th of June, 1857, but the Department of State refused to allow him any compensation beyond the rate of salary allowed a minister resident for the time of his service. His salary having been computed at that rate, he was paid the sum of $3,572 84.

Not conceiving that this afforded him a fair compensation for an important and special service, the memorialist appealed to the Secretary of State, and presented the following letter from the Hon. William Marcy, the Secretary of State, at whose solicitation he had consented to accept the mission:

"BALLSTON SPA, *June* 27.

"SIR: I have received a letter from the Hon. Isaac E. Morse, the late commissioner to New Granada, in relation to his compensation.

"It was understood that his expenses were to be allowed, together with a fair *per diem* compensation, but the precise rate was not, I think, agreed on.

"It was regarded as a highly responsible and difficult mission; and I thought he might justly claim as liberal a sum as had been paid in any similar case. I had in my mind the allowance made *at the department* to Mr. Schenck and Mr. Pendleton, which was, I think, about $20 a day.

"As there had been no particular appropriation for the mission, I expected Mr. Morse would be paid out of the contingent fund for for-

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eign intercourse. This was the usual, if not the universal, mode of payment in such cases.

"Very respectfully, your obedient servant,

"W. L. MARCY.

"Hon. LEWIS CASS, *Secretary of State.*"

Although the committee by no means adopt the precedent which Mr. Marcy appears to have had in his mind, they yet deem the duties performed by the memorialist of a most important character, and the mode of compensation in effect to have been fixed by the Secretary of State at the time the service was undertaken.

The committee, therefore, recommend that the memorialist receive a compensation for his services at the rate *per diem* of a minister resident, and that there be added thereto his traveling expenses at the rate of $15 *per diem* during the entire term of his mission.

There seems, however, to have been some difference of opinion between the Department of State and the memorialist as to the precise date when the mission terminated.

The memorialist arrived in New Orleans, on his return from New Granada, on the 28th April, 1857, and the department closed his compensation account as of that date.

It seems, however, that upon the memorialist's arrival in New Orleans, he found his family too unwell to permit his leaving them. He therefore telegraphed that fact to the Department of State, with a request that he might be allowed to remain a day or two in New Orleans, on account of his own health and that of his family, in reply to which he was authorized by the Secretary of State to "take his [your] time to come" to Washington.

Allowing, therefore, for this delay on leave, as well as for the time occupied in traveling to and from Washington, the date of the 1st June, 1857, should be properly fixed for the termination of his mission.

In view of all these circumstances, as well as of the importance of the services rendered, the committee recommend that the memorialist, Isaac E. Morse, be allowed at the rate of $7,500 per annum during the term of his special mission as commissioner to New Granada, and that he be allowed at the rate of $15 *per diem* for his traveling expenses during the entire term of his services as special commissioner, as aforesaid.

The committee report a bill in accordance with the foregoing opinions.

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IN THE SENATE OF THE UNITED STATES.

MARCH 28, 1860.—Ordered to be printed.

Mr. JOHNSON, of Arkansas, made the following

REPORT.

[To accompany Joint Resolution S. 10.]

The Committee on Public Lands, to whom was referred joint resolution S. No. 10, relating to the route of the railroad from Fond-du-Lac, on Lake Winnebago, in the State of Wisconsin, to Lake Superior, having had the same under consideration, submit the following report:

That by an act of Congress, approved June 3, 1856, (United States Statutes, vol. 11, page 20,) land was granted to the State of Wisconsin to construct a certain railroad from Fond-du-Lac, on Lake Winnebago *northerly* to the State line, and in accordance therewith, the line of the route was surveyed, and maps of the definite location of the contemplated railroad approved by the authorities of the State of Wisconsin, were filed in the General Land Office in 1857. Thus establishing the road permanently, and vesting the title to alternate adjacent sections in the State, under the law making the grant.

Now, to change the aforesaid route so permanently established and vested, from a *northerly* to an *easterly* line, would be in direct violation of the original grant, and throw everything pertaining to the route into great confusion, as will more fully appear by the following reports from the Commissioner of the General Land Office, to the honorable Secretary of the Interior, and of the latter to your committee, on the subject.

GENERAL LAND OFFICE,
March 6, 1860.

SIR: I have the honor to return, herewith, Senate joint resolution No. 10, received with the communication from the Committee of the Senate on Public Lands, authorizing a change in the location of the line of route of the railroad, from "Fond-du-Lac, on Lake Winnebago, northerly to the State line;" contemplated by the railroad grant to Wisconsin, by act of 3d June, 1856, and pursuant to reference, respectfully submit:

That maps of the "definite location" of the line of route of the road referred to, in view of the above-mentioned law, approved by the au-

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thorities of the State, were filled in this office, in 1857, and accepted as correct.

Upon these maps, as a basis, an adjustment of the grant was made, so far as the public surveys extended, the alternate sections reserved to the United States were proclaimed and offered at public sale, and sales thereof were made, and the lands inuring to the road certified to the State.

The resolution proposes to amend the act of 3d June, 1856, by authorizing the road to be constructed on a route to the eastward of the line as now located and adjusted.

The adjustment of the grant to the State of Wisconsin by act of 3d June, 1856, to aid in the construction of the road from "Fond-du-Lac northerly to the State line," has been made upon the line of route shown on the approved maps filed, recognized by the parties, and duly admitted on our files as the basis of said adjustment; under it the lands inuring have been certified to the State, and vested rights acquired by individuals; that basis then should bind the State, her grantees, and the general government.

I, therefore, cannot recommend the passage of the resolution asked for by the legislature of Wisconsin.

Very respectfully, your obedient servant,

JOSEPH S. WILSON,
Commissioner.

Hon. JACOB THOMPSON,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
Washington, March 13, 1860.

SIR: I have the honor herewith to return Senate joint resolution No. 10, to authorize a change in the location of the line of route of the railroad, in the State of Wisconsin, "from Fond-du-Lac northerly to the State line," which was inclosed with your letter of the 9th ultimo, for the views of this department thereon.

You will also find inclosed a copy of a report of the Commissioner of the General Land Office, dated the 6th instant, from which it appears that the road in question has been located, and the title of the State to alternate adjacent sections has vested.

The effect of the adoption of this joint resolution would be to introduce confusion and difficulty in the administration of the grant, and discharge the State from her present liability to construct the road, whilst she could retain the lands which were granted to her for that express purpose.

I therefore cannot recommend the passage of this joint resolution.

Very respectfully, your obedient servant.

J. THOMPSON, *Secretary.*

Hon. R. W. JOHNSON,
Chairman Committee Public Lands, U. S. Senate.

Your committee, therefore, report the joint resolution back to the Senate, with the recommendation that it be rejected.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 158.

IN THE SENATE OF THE UNITED STATES.

MARCH 28, 1860.—Ordered to be printed.

Mr. JOHNSON, of Arkansas, made the following

REPORT.

[To accompany Bill S. 290.]

The Committee on Military Affairs and the Militia, to whom was referred the memorial of William Vance & Brothers, having had the same under consideration, report:

That, in May and June, 1846, two companies of volunteers for the Mexican war to be under the command of Captains Boreland and Pike, in the regiment of Colonel Yell, were raised at Little Rock, Arkansas, and sent forward to Washington, in that State, to be mustered into the service. These companies, with others, were supplied with clothing and saddlery at the request of these officers; but, upon arriving at the place of muster, it was found that more troops had been sent forward than were requisite; the companies were too large, and the surplus were discharged without having been received.

When the account was presented at the treasury it was passed and allowed by the auditor, but the comptroller rejected it because the act of 2d June, 1848, only provided for repayment of advances made to troops which *were* mustered into the service, and the Secretary of War concurred in the decision; the amount is $847 38.

The accounts are made out in proper form, and certified by the captains of the companies, and the governor of the State, in his letter to the Secretary of War, 9th June, 1847, says: "The liberal and praiseworthy conduct of these gentlemen, (Vance & Brothers,) in stepping forward in aid of the government at this particular time, in a manner known at the time to be somewhat hazardous, reflects the greatest credit upon them, and should entitle them in the settlement of their accounts * * * to a slight departure from the rigid rules laid down for the government of the proper department for adjusting such claims."

In a similar case of A. S. Robinson, cashier of the bank of Missouri, Congress provided for reimbursement, with interest, of the amount advanced by that bank to volunteers assembled at St. Louis, under a requisition of General Gaines, with a view of being mustered into the service, but which were disbanded without being so received.

The committee report a bill for the relief of the memorialists, and recommend its passage.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 159.

IN THE SENATE OF THE UNITED STATES.

MARCH 28, 1860—Ordered to be printed.

Mr. SEWARD made the following

REPORT.

[To accompany bill S. 319.]

The Committee on Foreign Relations, to whom was referred the petition of J. Hosford Smith, late United States consul at Beirût, Syria, "praying an increase of compensation for his services as consul, and compensation for judicial services," report:

The petitioner, in the year 1850, accepted the appointment of consul at Beirût, in Syria, and engaged in trade at that place.

The compensation and perquisites of his office consisted, at that time, of a salary of $500, the fees of the consular office, and the privilege of engaging in business.

On the 1st July, 1854, the compensation of the consul at Beirût was raised to the sum of $2,000, subject to certain restrictions; and on the 1st January, 1855, the petitioner having been recalled by order of the President, gave place to a successor.

The petitioner represents that, during the period of his appointment it became necessary for him to advance large sums from his private means to extend the usefulness of the consulate. He represents, moreover, that he performed certain judicial duties within the intendment of the act passed August 11, 1848, entitled "An act to carry into effect certain provisions in the treaties between the United States and the Ottoman Porte, giving certain judicial powers to ministers and consuls of the United States in those countries," and claims to be entitled to the compensation therein allowed "any person vested by the Uuited States with consular authority in" any port in Turkey.

For the expenses and losses incurred and services rendered, as well as for having founded a trade which he alleges to have brought large additional revenues into the federal treasury, he asks indemnity and compensation.

Whilst your committee are satisfied that the petitioner has performed his official duties with fidelity, it does not appear proper to acknowledge the principles of public obligation which he has laid down for their guidance.

The compensation of the consulate at Beirût had been fixed prior to the date of his appointment. He admits that he accepted it as an incident advantageous to his commercial business. If, therefore, he expended his own money in extending the influence of the position, it

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is to be supposed that he was indemnified for the outlay by the actual or prospective fees of office, or profits of commerce. Certainly, no citizen could be required, by considerations of patriotism, to expend his own substance to advance the general commerce of his country.

In relation to the compensation claimed by the petitioner for judicial duties alleged to have been performed by him during the term of his consular service, the committee have had their attention called, by a letter addressed by the Department of State to the Committee on Commerce, on the 29th July, 1856, to the report of the House Committee on Foreign Affairs, (House Doc. No. 166, Thirty-fourth Congress, first session,) upon the petition of the Hon. George P. Marsh, "asking compensation for judicial services rendered by him under the act of 11th August, 1848, whilst minister resident of the United States to the Ottoman Porte."

As the compensation asked by Mr. Marsh depends upon identically the same legal authority with that asked by the petitioner, the committee adopt the facts and reasoning in the report referred to as conclusive against the compensation sought by the petitioner.

It is perfectly plain that ministers and consuls of the United States, appointed under and by virtue of treaties with the Ottoman porte, incurred an obligation to perform the services thereby imposed, and must be held to have accepted the salary and perquisites of the said appointments in full compensation of all diplomatic and judicial services imposed upon them by the treaty relations existing between the two countries at the date of their appointment to office.

The Department of State, in the communication referred to, states that the petitioner discharged the duties of his office with entire faithfulness, and added, by his commercial enterprise, to the revenues of the federal government.

It expresses the opinion that the petitioner should not receive additional compensation for consular or judicial services rendered or for expenses incurred, and adds that, "in view of all the circumstances of the case, that it would be proper that the rate of compensation should commence on the 1st July, 1853."

In consideration, therefore, that the petitioner has contributed, by his enterprise, to extend the commercial influence of the United States. That the compensation of the consulate at Beirût was increased upon his recommendation, and that the Department of State has recommended an increase of his salary as a gratuity for his services. The committee is of opinion that the petitioner should receive the sum of $1,500, as an addition to the salary already paid him for services as consul at Beirût, from 1st July, 1853, to 1st July, 1854, and report herewith a bill accordingly.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 160.

IN THE SENATE OF THE UNITED STATES.

MARCH 29, 1860—Ordered to be printed.

Mr. DURKEE submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Barbara Glover, formerly the widow of John Smith, praying for a pension for the revolutionary services of said Smith, beg leave to report:

That the petitioner represents that her first husband, John Smith, was a soldier in the revolution, and performed several tours of service in South Carolina, and in support of this assumption files a certificate from the comptroller of that State, showing that several indents, or certificates, amounting to £97 11*s*. 5*d*. sterling, were issued to a soldier or soldiers named John Smith.

The name of John Smith is not so unusual as to warrant the inference that her husband must have performed all the service indicated by these certificates, simply because he bore that name; yet that is the only link which connects him with the payments.

In 1850 the Commissioner of Pensions disallowed this claim, and appeals from his decision were made to Secretaries Ewing and Stewart, of the Interior Department, both of whom affirm the decision.

The committee, therefore, recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

MARCH 29, 1860.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany bill S. 11.]

The Committee on Military Affairs and the Militia, to whom was referred Senate bill No. 11, *"making an appropriation for the payment of the expenses incurred by the people of the Territories of Oregon and Washington in the suppression of Indian hostilities therein, in the years* 1855 *and* 1856," *having had the same under consideration, report:*

That a disastrous and general war with the Indians existed in Washington and Oregon Territories in 1855 and 1856, and that these Territories incurred an onerous debt in the prosecution of this war.

The threatened extermination of the whole white population prompted the governor of the Territory of Oregon, as authorized by the local legislature, to call out two regiments of mounted men (the ninth regiment being already in the field) and, from time to time, other troops, within the limits of the laws, as the exigencies of the service required; so that during these hostilities from 2,500 to 4,500 men were engaged in the defense of that Territory. In Oregon from one to two thousand men were called out, to repel the savages who threatened to massacre the frontier population.

During the session of 1855–6, the Oregon legislature passed "An act for the payment of the volunteers," which allowed four dollars per day for man and horse; but the Territory of Washington passed no laws on the subject.

Conceding the necessity for calling out these volunteers, and that they were called out by competent authority, the obligation has been recognized to reimburse all necessary and proper expenditures incurred by these Territories in suppressing these hostilities.

The Washington and Oregon war claims were presented for payment in 1856, when Congress authorized the Secretary of War to appoint a board of commissioners to examine and report them to him; and Captains A. J. Smith and Rufus Ingalls, United States army, and Hon. Lafayette Grover being so appointed, reported, in October, 1857, (Ex. Doc. No. 24, Thirty-fifth Congress, first session,) that the amount due by these Territories for this war was $6,011,497 36.

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The subject being before the House of Representatives in February, 1859, it was referred by the House to the Third Auditor of the Treasury for his examination, and his report of 7th February, 1860, reviews the claims in detail. (Ex. Doc. No. 11, Thirty-sixth Congress, first session.) As directed by the House resolutions, by assimilating the pay of the troops to the army standard, and adjusting the prices of supplies, transportation, &c., to those paid by the regular army in that country at the same period, the auditor reduced the aggregate amount of claims to $2,714,808 58, a little more than one third of the whole amount reported.

The commissioners had not authority to adjudicate and settle these claims; they were instructed to report them to the Secretary of War, and the committee, after examination of their report, consider some of their allowances extravagant. For example: $120 per month for the pay of mounted men, $5 a bushel for oats, and $2 for a horse-shoe, are prices stated for allowance.

In this connection it might be proper to note, that J. Ross Brown, special agent of the government, in his letter of 4th December, 1859, to the Commissioner of Indian affairs, (Sen. Doc. No. 40,) fully reviews the origin of this war, and at page 13, says: "The commissioners at Vancouver have faithfully and impartially performed their duty. Whatever sum they may have decided upon in estimating this war debt, I hold that amount to be justly due, and that Congress will at once provide for its extinguishment."

The Secretary of War, in his annual report of 1857–58, having had before him the abstract of these claims and the report of the commissioners, (Ex. Doc. No. 24,) says: "These officers entered upon their duties on the 10th day of October, 1856, and seem to have labored with great assiduity and patience in discharge of them, until the 20th October last, when they were brought to a close. I have examined this report very carefully, and conclude that, from the data they have adopted for their guide as to the prices for stores and subsistence, and time of service rendered by the men, it is not probable a more just and accurate result could be attained than these gentlemen have arrived at. The amount ascertained to be due is a very large one, and Congress will have to make provision for its payment, if it is intended they shall be liquidated, of which I presume there can be no doubt."

An examination of the Auditor's report to the House of Representatives shows that two companies, Captain Strong's and Captain Hays's, called out in Washington Territory, are not provided for as to their pay, while it is admitted that they rendered the same service as other companies; that allowances are made by the commissioners for services, &c., rendered to volunteers after they had been discharged from service; and that, in some instances, the same persons have been allowed for services in two or three capacities at the same time.

The committee have examined these claims with the care their magnitude and importance required, and with the view to an equitable settlement, report a substitute for the bill referred to them, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1860.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill S. 288.]

The Committee on Commerce, to whom was referred a bill "To create a separate district upon the Pacific coast for the inspection of hulls and boilers, and machinery of vessels propelled in whole or in part by steam," have examined the same, and report:

That the law now in force in relation to inspection districts provides for the appointment of nine supervising inspectors, who are required to assemble at least once in each year to establish rules and regulations for their own conduct, and that of the local boards, and also to assign to each of their own number the limits of territory within which he shall perform his duties.

It appears from a communication of the Secretary of the Treasury, made in reply to a letter from the chairman of your committee, that the distribution made by the inspectors is "extremely unequal and inadequate to enforce the security contemplated by the act. Two supervising inspectors were assigned to the comparatively small extent of territory watered by the Ohio; while the State of Florida south of Cape Sable, Alabama, Mississippi, Louisiana, Tennessee, and Arkansas, on the Mississippi river up to Napoleon, the whole of Texas, and the Pacific coast of the United States, comprising more than one half of the coasts and rivers of the United States," * * * "were assigned to a single supervising inspector. The remaining territory of the United States was divided among the eight other supervising inspectors, apparently without much regard to their relative responsibilities in enforcing the act." * * * * * * *

"The purpose to be attained by this measure is to have a supervising inspector, under the act of 1852, located on the Pacific coast. The department has long regarded such location as necessary and proper, but has no power in the matter. The nine supervising inspectors authorized by the present law are regarded by this department as amply sufficient, if properly located, to carry out the act of 1852." * * *

"A proper territorial distribution of their duties under the act might doubtless be made by the direct legislation of Congress; but to change such distribution in conformity with the varying local impor-

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tance in this respect of different sections of the United States, would require new legislation. For the purpose, therefore, of obviating the inconveniences and evils which the proposed measure is intended to provide for in fact, I have the honor to recommend that the Secretary of the Treasury be invested by law with power to assign to the several supervising inspectors of steamers, appointed under the act of 1852, the territorial districts within which they shall respectively discharge their official duties, and rearrange such districts from time to time as the public interest may require."

In compliance with the recommendations of the Secretary, the committee beg leave to report the accompanying bill as a substitute for the one referred to them.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 163.

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1860.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 341.]

The Committee on Claims, to whom was referred various memorials, asking payment for the recapture and destruction of the frigate Philadelphia, in the harbor of Tripoli, in the year 1804, *submit the following report:*

During our memorable contentions for the freedom of navigation of the Mediterranean, and after the war with Tripoli had commenced, a small squadron, under the command of Commodore Preble, (the United States frigate Constitution being the flag-ship,) was dispatched by our government, for the purpose of carrying on hostilities against that despotic power, and to bring it to terms.

The United States frigate Philadelphia, one of the squadron, commanded by Captain Bainbridge, when cruising off the harbor of Tripoli, struck upon the rocks lying in the immediate vicinity of the fortifications, and was stranded. Finding it impossible, after using every exertion, to get off his vessel, or to resist the overwhelming force of the enemy, Captain Bainbridge had to surrender; and his officers and men were made prisoners, and removed to the dungeons of the city fortifications. The frigate subsequently was got off the rocks by the Tripolitans, having sustained but little injury, and was removed by them within pistol shot of the Tripolitan navy, and made ready for sea. More than one hundred pieces of heavy cannon were mounted on board the different vessels of the Tripolitans, manned by upwards of one thousand seamen; and the whole lay within the immediate protection of formidable land batteries, consisting of one hundred and fifteen pieces of heavy artillery, and within sight of a force of twenty thousand troops, stationed in the city and its vicinity.

The loss of this fine frigate and her noble crew was seriously felt, and proved a great detriment to the American squadron, in carrying on efficient operations against an active enemy.

Under these circumstances, so annoying to our squadron, the then Lieutenant Decatur conceived the bold idea to recapture the frigate Philadelphia with his vessel, the United States schooner Enterprise, which he then commanded, and communicated his plan of operation to Commodore Preble. The commodore was fully impressed with the

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importance of so daring an act, and approving of the plan, accepted the offer of Lieutenant Decatur's services. But sensible that success must depend on the secrecy, celerity, and gallantry of its execution, and that an attempt to bring out the frigate, if captured, would in all probability be attended with too great hazard and loss of life, gave peremptory orders to set fire, after capture, to every accessible part of the frigate, and after "blowing out her bottom," to abandon her.

In compliance with this permission, and his orders, Lieutenant Decatur manned a small ketch of about sixty tons, (which he had recently captured, and named by Commodore Preble, the "Intrepid,") with seventy officers and men, volunteers from his own vessel, and sailed from Syracuse, where the American squadron lay, on the 3d February, 1804.

He had an unusually stormy passage, and arrived on the 16th following off the coast. After perfecting all his arrangements, he ran after dark into the harbor of Tripoli, disguising his movements as much as possible to deceive the enemy, by whom he was observed and suspected, and at about 10, p. m., lay his vessel boldly alongside the Philadelphia, boarded and carried her sword in hand in the most gallant style, after a severe, though short conflict on the decks of the frigate, in which upwards of twenty of the enemy were slain, and the rest driven below or overboard.

The capture was made with such gallant daring, and with so many concurring favoring circumstances, that in the opinion of many, the frigate could easily have been carried out of the harbor, and again added to the American squadron. But the peremptory orders of Commodore Preble forbade such an attempt, and after deliberately setting the captured vessel on fire, as directed in his instructions, and remaining on board "until the fire had communicated to the rigging and tops," Decatur abandoned her to her fate, bringing off his whole crew, under a heavy fire from the batteries and shipping, without the loss of a man, (having but one slightly wounded,) and rejoined the American squadron.

The details of this heroic transaction are given at large in House Doc. No. 27, 22d Congress, 1st session, containing the memorials of Mrs. Susan Decatur and Mrs. Mary Preble, accompanied by communications and reports of Commodore E. Preble, the then lieutenants Stephen Decatur, Charles Stewart, and others.

Amongst the many precedents, which the legislation of Congress affords for this measure of justice, the committee will only refer to the act of March 3, 1813, (2 Statutes at Large, page 818,) which provides for the payment to Captain Hull, of the frigate Constitution, his officers and crew, the sum of fifty thousand dollars, for the capture and destruction of the British frigate Guerriere, and the like sum to Captain Bainbridge, his officers and crew, for the capture and destruction of the British frigate Java. To which may be added the British sloop-of-war Hermes, *destroyed* by the garrison of Fort Boyer, Mobile Point, in September, 1814, and paid for by act of Congress.

Congress also paid for the capture and destruction of the Peacock, the Penguin, the Avon, and Reindeer, and several other vessels.

The people have an abiding interest in the achievements won under

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the flag of our common country; they give strength to the national institutions, and at this day, in considering the blessings which have descended to us from our ancestors, we may regard the renown which they acquired as among the chief, and this capture now provided for, as one of the most famous.

The value of the recaptured frigate Philadelphia, with her armament and stores, was estimated at between two and three hundred thousand dollars, but intrinsically of far greater value to the beligerents at the time of capture and recapture.

To do an act of justice to the families of those engaged in that achievement, so fruitful in subsequent glorious results, the committee report the accompanying bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 164.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of John Jordan, praying for an increase of his pension, beg leave to report:

That it appears the petitioner served in the war with Mexico, where, from exposure, he was attacked by disease, which has resulted in his total disability.

He was allowed a pension at the proper office for total disability, ($8 per month,) commencing on the 9th July, 1859, the date of the completion of the testimony, and he now prays that he may be granted a pension from the date of his discharge to the 9th July, 1859, when his present pension commenced.

His case is a meritorious one, as it appears he is now insane from the results of the disease contracted while in the service, yet, in the absence of any change in the general laws, his case cannot be made an exception to others equally meritorious.

The committee therefore recommend that the prayer of the petitioner be denied.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 165.

IN THE SENATE OF THE UNITED STATES.

APRIL 2, 1860.—Ordered to be printed.

Mr. THOMSON made the following

REPORT.

[To accompany Bill S. 346.]

The Committee on Pensions, to whom was referred the petition of Joseph Pattee, corporal in the thirty-fourth regiment United States infantry, having had the same under consideration, beg leave to report:

That it appears from the rolls that the petitioner enlisted in the thirty-fourth regiment United States infantry, on the 23d April, 1813. It also appears that, when he entered the service, he was robust and vigorous, and that, when he returned in 1814, he was in feeble health, owing to the exposures and hardships he endured during the campaign; that, from the time he left the service, he has never been able to perform half the daily labor he could endure at the time of his enlistment; and that, for the last eighteen years, he has rarely been able to do any work; that he is now poor and entirely destitute of property, and dependent on charity for the support of himself and wife, who is, and has been for many years, in very feeble health, and, therefore, prays a pension.

The statement of the petitioner is fully corroborated by Hon. J. D. Farnsworth, who was his lieutenant during the period in which he served, and since judge of the court of probate, Joshua Gould, and Asa Laughtons, his comrades.

Amos Townsend, a practising physician for more than forty years, and residing in the same neighborhood, although not in service, knew petitioner was a healthy man when he entered the service, and knows that, when he returned, he was afflicted with the inflammatory rheumatism, which has since become chronic; that his present disability was occasioned by fatigue and exposure while in the service of the United States, and that he is now totally disabled.

T. S. Lynde, a practising physician, testifies to the same facts, and says that ever since he has known the petitioner, which is for more than twenty years, he has been afflicted with a chronic rheumatism, and for several years past that this disorder has been occasionally translated to his stomach and lungs, producing a painful affection of the former organ, and hurried respiration to such a degree as to render his disability total.

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Hon. James Bates, late a representative in Congress, who was surgeon's mate of the thirty-fourth regiment, during the campaign, with the petitioner, and was present with him during the disastrous march down the Chataguay river, 25th November, 1813, corroborates the statements of Drs. Townsend and Lynde.

From the foregoing testimony in the case, the committee are of the opinion that the disability of the petitioner was caused from exposure and hardships he endured in the campaign of 1813; and, therefore, beg leave to report a bill and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1860.—Ordered to be printed.

Mr. HEMPHILL made the following

REPORT.

[To accompany Bill S. 367.]

The Committee on Patents and the Patent Office, to whom was referred the memorial of Frederick E. Sickels, the inventor of an improvement in the steam-engine known as the "Sickels' cut-off," asking that a law may be passed authorizing the Commissioner of Patents to reëxamine his application for an extension of his patent for the term of seven years, have adopted the report made to the Senate at the last session of Congress, with some modifications, and beg leave to submit the same to the Senate, as follows:

The memorialist was the inventor of an improvement in the steam engine, known as the "Sickels' cut-off," for which he obtained a patent on the 20th day of May, 1842, for the term of fourteen years. Previous to the expiration of the patent, on the 20th of May, 1856, the memorialist made an application to the Commissioner of Patents for an extension for seven years. Testimony was accordingly taken, and the case set for hearing before the Commissioner for the 5th day of May, 1856.

The first section of the act, approved May 27, 1848, amending the law providing for the extension of patents, provides that the Commissioner shall refer the application "to the principal examiner having charge of the class of inventions to which such case belongs, who shall make a full report to said Commissioner of the said case, and particularly whether the invention or improvement secured in the patent was new and patentable when patented," &c. The case now under consideration was duly referred to the examiner, who reported on the 3d day of May, two days before the final hearing by the Commissioner, that the evidence was "neither full nor clear," and that, from a full reading of the voluminous testimony, it appeared that Mr. Sickels was "not the 'original and first inventor' of the drop valve and dash pot as covered by the claims allowed him in the patent." The examiner further reported that "of the other questions involved under an application for the extension of a patent, they can all, as applied to this application, be answered affirmatively. The invention of the drop valve cut-off is one of much merit, value, and usefulness.

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It is evident from the papers filed on this application, that Mr. Sickels has given earnest attention to the introduction of the invention."

The Commissioner's decision against the extension is dated the 20th of May, 1856, the date of the expiration of the patent. In reviewing the case, he refers to the act of 1848, already quoted, and the decision of the examiner that this invention "was not new and patentable at the time it was patented," and remarks that he is in doubt "whether it is proper for the Commissioner to review such a decision of the examiner, inasmuch as the law devolves this duty entirely on the examiner, differing in this particular from other examinations, which are contemplated to be made *constructively* by the Commissioner himself. At all events, I should feel unwilling to reverse the decision of the examiner in such cases, unless clearly satisfied of such decision being erroneous." The Commissioner then proceeds to say: "I have, however, in the present case, undertaken to review such a decision. I see some reason to doubt the correctness of the decision of the examiner, but not sufficient to cause the scale to preponderate decidedly in the contrary direction. The testimony is conflicting and voluminous. The time which I have been enabled to bestow upon the case has not been sufficient to enable me to give it that complete analysis which would enable me to come to a conclusion entirely satisfactory to myself, and I feel, therefore, compelled, somewhat reluctantly, to refuse the extension."

It appears that three suits at law, involving the question of the originality of the invention, have been decided in favor of Mr. Sickels and his assignees, upon substantially the same evidence that was submitted to the Commissioner of Patents to sustain the application for an extension. Two of these decisions have been examined by the committee. In December, 1843, a suit was tried in the circuit court of the United States for the southern district of New York, before Judge Betts, being an action against John F. Rodman for an infringement of the Sickels patent. An issue in this case was that Mr. Sickels was not the "original inventor." Without recapitulating the evidence then presented, or the rules of law laid down by the court, it is sufficient to state that a verdict was rendered by the jury for the plaintiff, sustaining the originality and genuineness of the patent at all points. The same issue was decided in a more recent case, tried before Judge Grier, in September, 1856, in the circuit court of the United States for the district of New Jersey, and since the expiration of the patent, against the Gloucester Manufacturing Company for an infringement. Upon the question whether Frederick E. Sickels was the first and original inventor of the improved machine claimed in his patent of May 20, 1842, Judge Grier decided: "On this point, I must say that, after a careful examination of the very voluminous and contradictory testimony relating to it, I feel satisfied that Frederick E. Sickels is the first inventor of the improved machinery for effecting a cut-off in steam engines, as described in his patent." The uniform decisions of the courts in the only cases tried involving the question of originality have sustained the claim of Mr. Sickels as the *original inventor*.

As these decisions of the courts, made both before and after the

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report of the examiner in the Patent Office, are in conflict therewith, the committee are of opinion that there are grounds for supposing that the examiner committed an error, which would have been corrected by the Commissioner of Patents had he been clear as to his power to revise the opinion of the examiner, or time permitted for him to fully investigate the case.

On the question as to whether Mr. Sickels has ever been remunerated for his time, trouble, and expenditures in getting up, introducing, and perfecting his invention, your committee are satisfied that he has not been remunerated. Your committee have in proof in the papers on file that whilst the invention of the memorialist is of unquestioned utility and merit, yet notwithstanding these facts, from the pressure of circumstances he was compelled to dispose of his invention to other parties, in order to raise the means of perfecting his invention, procuring a patent therefor and introducing it into use, and that the assignees or purchasers were the parties benefited, and not the meritorious originator of the invention.

Your committee respectfully submit that, in their judgment, justice demands that the memorialist should have the further protection to his invention which an extension for seven years will give him. They therefore report a bill authorizing the Commissioner of Patents to rehear the application, and to grant an extension of seven years if the claimant be entitled to it under the laws regulating renewals of patents. The committee have so drawn the bill as in their opinion to protect the rights of those who may have adopted or used the invention since the expiration of the patent, 20th May, 1856.

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IN THE SENATE OF THE UNITED STATES.

APRIL 3, 1860.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany bill S. 368.]

The Committee on Foreign Relations, to whom was referred the claim of the legal representatives of John Forsyth, deceased, having maturely considered the same, beg leave to report:

That they fully concur in the report made by the said Committee on Foreign Relations to the Senate of the United States at the first session of the Thirty-fifth Congress, and adopt the same as their report on said claim to the Senate at this present Congress:

IN THE SENATE OF THE UNITED STATES, MAY 20, 1858.

The Committee on Foreign Relations, to whom was referred the claim of the legal representatives of John Forsyth, having maturely considered the same, beg leave to report:

That the late John Forsyth was appointed minister of the United States to the court of Spain on the 16th of February, 1819, and served in that capacity from the 18th February, 1819, the day he entered upon the duties of the office, until the 3d March, 1823, the day it terminated, embracing a period of four years and sixteen days. He was allowed the usual outfit, equal to one year's salary, and his infit, equal to one quarter's salary; also the sum of $4,313 69 for his contingent expenses during the period of his mission.

Thus stated:

For amount of outfit	$9,000 00
For salary, four years and sixteen days, at $9,000	36,350 00
For contingent expenses, allowed in the adjustment of his accounts	4,313 69
For infit, equal to one quarter's salary	2,250 00
	51,913 69

To which is to be added the following items, which entered into his accounts, and which were allowed to him, viz:

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Amount paid F. C. Fentwick	$200 00	
Amount paid for destitute seamen	1,319 45	
		$1,579 45
		53,493 14
By warrant in favor of treasurer		194 52
		53,687 66

To liquidate the above, the following payments were made to him, viz:

To warrants, per Register's certificate	$18,309 00	
To drafts on Baring Brothers & Co., from 10th September, 1819, to 8th April, 1823, £6,495 4*s*. 7*d*., at par, is	28,867 67	
To amount allowed Thomas L. Brent, as acting chargé d'affaires, during the absence of Mr. Forsyth	1,813 86	
To warrant on the Treasurer	3,289 82	
		52,280 35
Balance due Mr. Forsyth		1,407 31

This balance of $1,407 31 was charged to Mr. Forsyth, in the adjustment of his accounts, as *gain and exchange* on the drafts drawn by him on the London bankers, viz:

On £2,025 1*s*. 3*d*., per report No. 991,	$882 18
On £1,690 9*s*. 1*d*., per report No. 1203,	389 44
On £2,779 13*s*. 5*d*., per report No. 1332,	135 67
	1,407 29

The salary of Mr. Forsyth was due and payable to him at Madrid, his place of residence in Spain. The United States deposited money with Baring Brothers, of London, their bankers, which was to be drawn on by Mr. Forsyth, in payment of his salary. Accordingly the committee find that the amount as above stated was drawn for by Mr. Forsyth upon Baring Brothers, of London, and that instead of gaining by this sale, Mr. Forsyth actually incurred losses.

In selling his drafts, the pounds sterling English currency, in the hands of Baring Brothers, were first converted into pesos of Spanish currency, or into francs, of French currency, and then, in stating his accounts by the United States accounting officers, these pesos and francs are changed into the dollars and cents of the currency of the United States.

The committee find that whilst Mr. Forsyth was minister at Madrid, the Spanish peso was worth only 36 pence of English currency, and only 66⅔ cents of United States currency. But in making up the ac-

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counts of Mr. Forsyth at the United States Treasury Department, the Spanish peso is charged to Mr. Forsyth as being worth 40½ pence of English currency, and 75 cents of the currency of the United States. It was by thus erroneously estimating the peso at 75 cents of United States currency, instead of 66⅔ cents, its true value, that a seeming gain was shown to have been made by Mr. Forsyth in the sale of his drafts on London; whereas, in point of fact, he incurred an actual loss, as is shown by estimating the peso at its true value in American currency, which is 66⅔ cents.

That the Spanish peso was estimated at 75 cents of the currency of the United States, in making up Mr. Forsyth's account at the Treasury Department, a simple arithmetical calculation will at once demonstrate. The process is simply to take the number of pesos realized by the sale of each one of his drafts and multiply the same by 75 cents.

So also, in like manner, an arithmetical calculation demonstrates the value of the peso of Spanish currency to be 36 pence of English currency, as thus:

According to Kelly's Cambist, published in London, in 1821, which is to be found in the State Department, and which is considered to be of unquestionable authority, the English sovereign, or pound sterling, contains 113.01 grains of pure gold; and the quadruple pistole of 1801, or doubloon, contains 360.05 grains. (See Kelly's Cambist, vol. 2, page 158.) Then we have this proportion: As 113, the number of grains in one pound sterling, are to 240, the number of pence in one pound, so are 360, the number of grains in one doubloon, to 765 pence. Thus showing the doubloon to be equal to 765 pence of English currency.

But the doubloon is equal to 16 hard dollars of 20 reals vellon; or, in other words, to 320 reals. (1 Kelly, 317, and 2 Kelly, 88.) And the real contains 34 maravedis. (1 Kelly, 316.) And the dollar of exchange, in Spain, contains 15 reals and 2 maravedis vellon, or 512 maravedis.—(See 1 Kelly, page 317.)

We then state this proportion: As 320 reals, or (320×34) 10,880 maravedis, the number in the doubloon, are to 785, the number of pence in a doubloon, so are 15 reals, and 2 maravedis vellon, or 512 maravedis, the number in the dollar of exchange, to 36 pence. Thus the Spanish peso is demonstrated to be equal to 36 pence English currency.

And that 36 pence, English currency, are equal to 66⅔ cents of our currency, is demonstrated by the following proportion: As 240, the number of pence in the pound sterling, are to 444 cents, the value of the pound sterling in our currency, so are 36 pence to 66.6 cents.

A few of his drafts, the committee find, were sold by Mr. Forsyth for francs of French currency instead of pesos; and as in the case of the peso, so in case of the franc, the latter, in stating his account at the Department of the Treasury, was estimated to him at too high a value, or, what is the same thing, the pound sterling was estimated to him as being worth only 25.05 francs, instead of 25.25 francs, its true value. An examination of the accounts and vouchers will show at what value in francs the pound sterling was estimated to Mr. Forsyth. And what the true value of the pound sterling is in francs is shown thus: The

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40 francs coin of France contains 179 grains of pure gold. (See 2 Kelly's Cambist, p. 158.) Of course, one franc contains (179 divided by 40, or) 4.475 grains.

We have already seen that the pound sterling contains 113 grains. And to ascertain how many francs there are in one pound sterling, we have only to divide 113 by 4.475. The process gives us (113÷4.475) 25.25.

Your committee have procured from the Treasury Department a statement showing all the drafts drawn by Mr. Forsyth upon London, and also the amount of gain charged against him upon the same, in making up his accounts, by the accounting officer of the treasury. They have also procured copies of the vouchers furnished the department by Mr. Forsyth, showing the rates at which he sold these several drafts respectively, whether sold for pesos or francs. And they have caused elaborate and accurate calculations of the losses and gains which were in fact really incurred or realized upon the sale of each one of them to be made. And they find, that instead of realizing gains upon the sale of each one of them, Mr. Forsyth actually sustained loss upon the sale of all of them except two; and that the aggregate of his losses amounted to $760 81, while the aggregate of his gains was but $28 04, showing an excess of loss over gain of $732 77. Whereas, in the account made up with him at the Treasury Department, he is charged with the sum of $1,407 29 as gain upon the sale of his drafts on London. It follows, therefore, that he stands charged, in the account made up with him at the department, with $2,140 06 more than he ought to have been charged with. In other words, upon the final settlement of his account, the United States was really indebted to Mr. Forsyth in the last-named sum, which the committee think ought to be refunded to his legal representatives, and they report a bill accordingly.

Your committee also submit herewith their calculations named above.

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IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1860—Ordered to be printed.

Mr. HARLAN made the following

REPORT.

[To accompany Bill S. 371.]

The Committee on Public Lands, to whom was referred the petition of the settlers on the "Fort Atkinson military reservation and old Indian agency," praying the right of preëmption, have had the same under consideration, and respectfully report:

In reply to the inquiry made by your committee at the War Department, they were informed that "all the buildings and movable property on it were sold several years ago, and the site can never be required again for any military purpose. If the lands have not already been sold, it would be advisable to turn them over to the Department of the Interior."—(See letter hereto attached.)

On application to the Department of the Interior for information, the Commissioner of the General Land Office says:

"It appears, from the records of this office, that sections 8 and 17, the east half of section 7, and the east half of section 18, township 96 north, range 9 west, 5th principal meridian, Iowa, were reserved for Fort Atkinson by the Secretary of War, on 16th August, 1849, and relinquished as being no longer needed for military purposes, by his letter to the Secretary of the Interior of 10th January, 1851.

"The tracts described are now, therefore, in the category of lands within an abandoned military site, under the control of the War Department, and not subject to the operation of existing land laws through this office. By the sixth section of the act of 12th June, 1858, these lands are not subject to sale or preëmption under any of the laws of the United States; hence the application of the settlers to Congress for relief. Under the act approved July 30, 1856, vol. 11, p. 453, chap. 66, Mrs. Caroline Newington entered east half of section 7, and west half of section 8, township 96 north, range 9 west, for which a patent was issued."

The War Department, having abandoned these three sections of land, and Congress having authorized, by special act, the sale of the most valuable section, embracing the improvements and public buildings, at the minimum price, the people were justified in believing, and doubtless did believe, the residue to be subject to preëmption, as other public lands, as they allege in their petition. They have occupied and

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improved these lands in good faith in quanties varying from forty to one hundred and sixty acres each. To exclude them from their homes and the improvements which constitute the total possessions of many of them, would be a hardship which your committee cannot recommend.

Your committee would also report that these lands are valuable only for agricultural purposes, and were not at the time of their settlement worth more than $1 25 per acre. They, therefore, ask leave to report a bill for the relief of the petitioners.

QUARTERMASTER GENERAL'S OFFICE,
Washington, February 9, 1860.

SIR: I have the honor to report on so much of the letter of the honorable chairman of the Committee on Public Lands as relates to the site of Fort Atkinson and Leavenworth Island, that the latter is not included in any military reserve; and I therefore can say nothing in regard to it. The former was a military reserve; but all the buildings and movable property on it were sold several years ago, and the site can never be required again for any military purpose. If the lands have not already been sold, it would be advisable to turn them over to the Department of the Interior.

Bill No. 19 I do not find among the papers referred to this office.

I return the letter of the honorable chairman of the committee, with the several papers from the Department of the Interior which accompanied it.

I have the honor to be, sir, your obedient servant,

THOMAS S. JESUP.
Quartermaster General.

Hon. JOHN B. FLOYD,
Secretary of War, Washington, D. C.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 169.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1860.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 373.]

The Committee on Claims have had under consideration the memorial of William P. Bowhay, and make the following report:

Mr. Bowhay claims to have invented a machine for doweling, which he asserts has been for many years used in the navy-yards of the United States in the construction of ships-of-war; the claimant obtained a patent for this machine in 1816, which has long since expired, and whether the government has used it or not, the use of the machine was open to the world, and the government cannot be held responsible for it. Besides, the superintendent of the Bureau of Construction states, in a letter which was before the committee, that the machine in question has not been used by the government for the last twenty-five years.

The committee, therefore, cannot admit that the petitioner has any claim for the alleged use of his machine. The committee, however, considered the petitioner's case in another aspect. Under the petition referred, and the facts stated and proved, it appears that he was in the employment of the United States as a ship carpenter, on board the United States ship Congress, at the navy-yard at Washington city, as far back as 1816; that whilst so employed, and at work on the ship, the scaffolding gave way, and he was precipitated into the hold of the ship, receiving a dangerous fall, and was taken up insensible—was seriously hurt and wounded; and that he has been a cripple from that day to this.

The claimant came in person before the committee, with a reputable witness, who was present at the time of the accident, and who testified to the facts stated in the petition. The claimant exhibits himself as a very old and very infirm man, much crippled, and evidently incapacitated to earn a subsistence. The committee consider him a pitiable object, and appealing strongly to their sympathy. As the injuries which have thus rendered him incapable of supporting himself were received whilst in the employment of the government, and from no fault of his own, they consider him eminently entitled to relief.

Following several precedents heretofore made in similar cases, the committee have reported a bill to allow him five hundred dollars, which would probably be sufficient to support him during the remaining few years of his life.

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IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1860.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany Bill S. 374.]

The Committee on Claims, to whom the claim of Mrs. Eliza E. Ogden was recommitted, by order of the Senate, have had the same under consideration, and concur in the report of the Committee on Claims of the Senate on this claim, made during the first session of the last Congress, which the committee hereby adopt, and report a bill accordingly, for the relief of the memorialist. The report alluded to is as follows:

IN THE SENATE OF THE UNITED STATES, *May* 15, 1858.

The Committee on Claims, to whom was referred the petition of Eliza E. Ogden, report:

The petitioner, as the widow of the late Major Edmund A. Ogden, asks to be allowed a commission of two and a half per cent. on the sum of $116,040 disbursed by her late husband out of the appropriations for the suppression of Indian hostilities, and on $279,238 10 disbursed in the Mexican war—making an aggregate of $395,278 10. These disbursements were made by him as an assistant quartermaster in the United States army, between the 1st October, 1840, and the 30th September, 1849, as the committee is informed upon inquiry at the office of the Third Auditor of the Treasury.

Mrs. Ogden cites, as a precedent for this allowance, the case of the widow of Captain Hetzel, who was allowed a like percentage on the sums disbursed by her husband, as assistant quartermaster, out of appropriations made for the suppression of Indian hostilities, by a special act of Congress. (10 Stat., 736.) A similar allowance was made to the widow of Captain Eneas Mackay, for like disbursements. (10 Stat., 813.) But in both instances the allowance of two and a half per cent. was limited to disbursements made prior to 30th September, 1838.

In their report, accompanying the bill for the payment of the percentage to Mrs. Mackay, the Committee on Military Affairs of the House of Representatives say: "These disbursements of special

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appropriations are considered to have been no part of the official duty of Colonel Mackey; and such being the case, it was reasonable for him to expect the usual compensation for taking upon himself the labor and responsibility of making them." But after the passage of the act of July, 1838, the condition of things was changed. This is explained by the following extract from a letter addressed by General Jesup to Hon. E. B. Washburne, House of Representatives, dated 15th December, 1853. (See House Report No. 40, 1st session 33d Congress.) General Jesup says: "When the Creek and Seminole Indians became hostile, a large force of militia and volunteers was necessarily called into service. The quartermaster's department, organized for a limited peace establishment, had not sufficient officers for the responsible, laborious, and important duties which devolved on it by the sudden state of war; all the powers and faculties of the few officers composing it were taxed to the utmost. Congress, satisfied of the necessity of an increase, authorized, in July, 1838, the appointment of twelve additional officers. These additional officers were mostly at their posts, it is understood, by the close of the third quarter of 1838. As these officers were appointed in direct reference to the large militia and volunteer force required in addition to the regular army, I should not consider any extra compensation due for disbursing the special appropriations after the 30th September, 1838, whatsoever equity there may be in such claims for disbursing those appropriations previous to that time."

In conformity with these views, no allowance was made to Mrs. Hetzel or Mrs. Mackay for disbursements of this character made subsequently to September 30, 1838; and the committee think that the same rule should apply in the present case, which excludes all allowance for disbursements for the suppression of Indian hostilities, as they were made subsequently to that date.

In reference to the other branch of the claim, to wit: for disbursements for the Mexican war, General Jesup, in the letter above quoted, remarks: "For payments made by the pay department on account of the volunteer force serving in the Mexican war, Congress authorized a commission, not exceeding one half of one per cent., on all sums disbursed, not to exceed $1,000 per annum to each paymaster. The responsibilities of the officers of the quartermaster's department are equal to the responsibilities of the officers of the pay department, and their labors are much more onerous. There is no reason, therefore, for allowing extra compensation to paymasters which will not apply with equal or greater force to quartermasters." In accordance with these views, Congress authorized the allowance of half of one per cent. in the settlement of Quartermaster Mackay's accounts. If the same rule be applied in this case, the claimant will be entitled to receive at that rate per cent. for the disbursement of $279,238, in the years 1846, 1847, and 1848–49, as shown by a letter of the Third Auditor, dated May 14, 1858, addressed to the chairman of the committee, which is among the papers, amounting to $1,396 19, for the payment of which the committee report a bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 171.

IN THE SENATE OF THE UNITED STATES.

April 5, 1860.—Ordered to be printed.

Mr. FITZPATRICK made the following

REPORT.

[To accompany Bill S. 376.]

The Committee on Military Affairs and the Militia, to whom was referred the memorial of Major Benjamin Alvord, a paymaster in the United States army, having had the same under consideration, report:

That on the 4th of January, 1860, the memorialist delivered to Brevet Major Robert Allen, of the quartermaster's department, at San Francisco, in California, $14,000 in specie, to be transported through that department to Major Alvord, at Vancouver, Washington Territory. Major Allen turned this money over to Wells, Fargo & Co., for transportation, and they placed it on the steamer Northerner, W. L. Dall, master, which left San Francisco the same day for the Columbia river. The treasure was in care of a faithful agent of the company, D. W. Barry. On the 5th of January, 1860, the Northerner was wrecked by striking a rock near Cape Mendocina, and the money was lost in despite of all the efforts of its custodian, Mr. Barry, who lost his life in his attempt to save these funds.

These facts are sustained by the sworn testimony of Major Allen, Samuel Knight, an agent of Wells, Fargo & Co., and by Captain Dall, master of the steamer.

The committee are fully satisfied that the money was lost in the manner stated above; that the utmost exertions were made to save it; that no part of it has been recovered, there being no insurance against the dangers of the sea, and that Major Alvord, the memorialist, is free from all blame in connection therewith; and they therefore report a bill for his relief, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 172.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany Bill S. 378.]

The Committee on Private Land Claims, to whom was referred the petition of the mayor and council of the city of Baton Rouge, have the honor to report:

That from the titles and documents produced by the petitioners, it appears that a considerable part of the city of Baton Rouge was laid out on certain lands granted by the French and Spanish governments long anterior to the cession of Louisiana to the United States, but that said grants never having been presented to any board of commissioners for confirmation, the lands still appear as public lands on the maps of the land office, and the citizens are harrassed by apprehensions lest they be disturbed in their ancient possessions, and it is by reason of these apprehensions that an appeal is now made to Congress for the passage of an act quieting their title.

The Commissioner of the General Land Office, to whom the matter was referred for information by the committee, has drafted the annexed bill for the purpose of putting an end to all doubt on the subject, and the committee approving the same, now recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 173.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 379.]

The Committee on Private Land Claims, to whom was referred the petition of Daniel Whitney, praying for the issue of a patent in his favor for certain lands, respectfully report:

That they adopt the annexed report made on this case by the Committee of the Senate, on the 20th January, 1858, and for the reasons therein stated, recommend the passage of the accompanying bill:

IN THE SENATE OF THE UNITED STATES, *January* 20, 1858.

The Committee on Private Land Claims, to whom was referred S. bill 595, *"A bill for the relief of Daniel Whitney," have had the same under consideration, and concur in and adopt the following report, heretofore made by this committee:*

That they have examined the papers and proofs accompanying said bill, and contained in the American State Papers, and find that on the 15th day of September, 1823, Francis Lavonture presented to the commissioners appointed under the act of 1823 to hear and determine the claims of persons to tracts of land occupied and cultivated by them in the Green Bay settlement on the 1st of July, 1812, his claim, and the testimony to support it, to a tract of land described as follows:

"Commencing at low-water mark on Fox river, and running west eighty arpents, or so far as to make said claim contain six hundred and forty acres, as confirmed by said commissioners; and bounded on the south by a certain tract occupied by the United States garrison; west and north by wild or uncultivated lands; and east by Fox river, being sixteen arpents in breadth."

That the said commissioners decided that the claim be confirmed, and that it was not in conflict with any confirmation before made, (vol. 4 American State Papers, Green's edition,) and that they gave their certificate to the correctness of the proceedings had before them. That although by the act those proceedings confirmed and made perfect the title, vesting the same in the said Lavonture, yet the said tract of land

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was embraced in a report made by the said commissioners to the Secretary of the Treasury upon all the unsettled claims in Michigan.

That the Secretary of the Treasury, instead of executing or carrying into effect the law of 1823, and instead of selecting the doubtful and uncertain claims from those which were confirmed, decided to lay all the claims before Congress, and submit all the decisions of the commissioners to it for supervision, refusing to cause the claims actually confirmed by law to be surveyed, and patents to be issued to the claimants.

That on the 17th of April, 1828, Congress passed an act to confirm certain claims passed upon by the commissioners, excluding those in the county of Michilimackinac, and also certain lands occupied by the United States for military purposes. That about the time of the passage of this act, the President of the United States (upon erroneous representations) was induced to make a large military reservation of land, in the vicinity of Fort Howard, at Green Bay, amounting to five or six thousand acres. In this tract was included the land of Francis Lavonture. The confirmatory act of 1828 was, therefore, of no benefit to him in procuring him the evidence of his title, as the Secretary, after its passage, refused the patent, because his land was thus embraced in the reservation.

That the title to the land continues in this condition, although the post, as a military station for troops, has been abandoned, and every part of the reservation has ceased to be occupied for military or government purposes; that the lands are not now required for such purposes, notice having been given during the year 1854, by the Secretary of War, for their sale; and that no compensation was ever made to the said Francis Lavonture for thus taking his land.

The action of the War Department seems to render it necessary, to relieve the claimants, to pray for an act of Congress in their behalf.

From the facts above set forth, the committee are of opinion that the said Lavonture, or his legal representative, is entitled to the confirmation of his title; they therefore report back the bill without amendment, and recommend its passage.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 174.

IN THE SENATE OF THE UNITED STATES.

APRIL 5, 1860.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT

[To accompany bill S. 380.]

The Committee on Private Land Claims, to whom was referred the petition of Joseph Ménard, praying to be allowed to relocate certain land warrants, respectfully report:

That they adopt the annexed report, heretofore made by this committee on the 23d February, 1857, and, for the reasons therein stated, recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES, *February* 23, 1857.

The Committee on Private Land Claims, to whom was referred the memorial of Joseph Ménard, praying to be allowed to relocate certain warrants for land granted to the late Marquis de Lafayette, of which he is the assignee, have had the same under consideration, and submit the following report:

These warrants were issued under the act of Congress of 1803 by the Secretary of War, and located under the act approved March 27, 1804.

The location of warrants numbers three, four, and five was found to be upon lands owned by private claimants, their title to which was subsequently confirmed. These locations, therefore, were canceled by the General Land Office.

Subsequent to such location, the interest of the Marquis de Lafayette to the warrants in question was assigned to third parties. There being no authority to relocate the said warrants under the act of 1804, after their first location had been cancelled, the legal holders of said warrants made application to Congress, who, by an act approved February 26, 1845, authorized the relocation of said warrants—three, four, and five—upon any of the unappropriated public lands within the State of Louisiana. Under this latter act of Congress the said warrants were relocated, and upon application for a patent, the locations under two of said warrants, to wit: numbers four and five, were canceled by the Commissioner of the General Land Office, on the ground that the

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lands located were covered by *live-oak timber*, and was therefore not subject to location.

The petitioner, yielding to the decision of the Commissioner, now asks that, since the locations under these warrants have been twice set aside and canceled, he may be permitted to relocate the said warrants, numbered four and five, upon any of the public lands of the United States.

The act of 1845 would be ample enough to authorize a relocation within the State of Louisiana; but owing to the fact that nearly all of the lands in said State have either been disposed of by the United States, or are covered by private claims, the right, therefore, to relocate under said act would be of no great value to the claimant.

The committee are of opinion that justice to the petitioner requires the passage of an amendatory act, giving him the right to relocate said warrants upon any of the public lands subject to sale at private entry; they therefore report the accompanying bill, and recommend its passage.

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36TH CONGRESS, 1st Session. } SENATE. { REP. COM. No. 175.

IN THE SENATE OF THE UNITED STATES.

APRIL 7, 1860.—Ordered to be printed.

Mr. FOOT made the following

REPORT.

[To accompany bill S. 383.]

The Committee on Claims, to whom was referred the petition of James Meyer, praying compensation for services rendered and losses sustained by him as quartermaster to the Mexican boundary-line commission, having had the same under consideration, report:

In June, 1850, the petitioner was appointed quartermaster to the Mexican boundary commission, and immediately entered upon the duties of the office. He appears to have discharged his duties to the entire satisfaction of the commissioner and the department until about the 1st of August, 1851, when he was superseded by the assignment of the quartermaster's department of the commission to Lieutenant Burnside, United States army. Mr. Meyer was at this time with the commission at Rita del Cobre, in New Mexico. On being relieved, he left that place with a small party for El Paso, where, as he states, he was compelled to remain for several months before he could find an opportunity by which he could safely reach the States.

In reference to this delay, Charles Sheldon deposes that he was a resident of the county of El Paso; that his private and official business made him acquainted with the condition of the country and the means of conveyance and communication between El Paso and the nearest points, particularly San Antonio; he remembers well Mr. Meyer's anxiety to return home, but could not, after being relieved from the commission, until after a delay of some months, there being, during that period, no trains or parties leaving for San Antonio, nearly seven hundred miles distant, the road to which runs through the Indian country, and is always unsafe to travel, except by well appointed and strong parties.

Mr. Meyer claims the allowance of his salary during this detention, amounting to $733 87; and for subsistence, at $1 50 per day, $237; and for the other expenses of his journey home, of which the items are given, $531 83. Of this sum $200 was advanced by the commissioner, and allowed at the department, and the present claim is for the balance, $1,302 69.

Lieutenant Burnside, United States army, states that he was at Santa Rita del Cobre when Major Meyer left; that delays of the length

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of twice mentioned are not unfrequent; that it is dangerous to travel from the borders of New Mexico to the settlements in small parties, and that parties, therefore, are frequently detained for months before a party can be organized large enough to travel safely; and that he has examined Mr. Meyer's charges, and "that they are very reasonable, and, in fact, below the ordinary cost."

It clearly appears, from the evidence in the case, besides the statement of the petitioner, that he was detained without any fault on his part for the time stated in his memorial, on his going from the place where he was superseded to San Antonio, Texas, which appears to have been his home. The time thus consumed—viz: five months and five days—was lost to him by the fact of his unexpected discharge from the public service. He had been appointed to a responsible office, upon an arduous service, which he discharged with fidelity. He was taken out upon the frontiers of the United States and Mexico, at a great distance from home, in a strange country, surrounded with difficulties and dangers, and at this distant point was discharged by the government, and left to find his way back to the United States without any escort or other assistance than what he could provide for himself. His personal safety demanded that he should wait at El Paso until he could find a company returning to the State, with which he might travel without the danger of being killed by hostile Indians. It was the act of the government that he was thus subjected to this risk, inconvenience, and loss of time. Every principle of justice and fair dealing requires that he should be paid for the expenses attendant upon his journey home, and during his unavoidable detention on the road.

The committee, therefore, think that he should be paid his account for expenses of servant, mules, forage, and provisions, as stated in his account, and substantiated by proof. The committee, however, do not consider that he is entitled to expenses for the time spent in traveling from San Antonio, Texas, to Washington city. San Antonio was his home, and when the government covered the expense of reaching that place from the point of his discharge, it performed every obligation growing out of his appointment and subsequent dismissal.

It was not bound to keep him in service or pay afterwards; and, if he went to Washington at his own option, without the authority or direction of the government, it was clearly not bound to pay for either the expense or time spent in the journey. The committee, therefore, reject that portion of the petitioner's account, as well as the claim for continuation of his salary during the time after he was suspended; and report a bill for the residue of his account, being $568 82, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM No. 176.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Nancy Stout, widow of Joseph Stout, praying for a pension for the revolutionary services of her husband, having had the same under consideration, beg leave to report:

That the petitioner claims that her husband was a private in the revolutionary war; that he entered in the service in Randolph county, North Carolina, about the year 1781, and was honorably discharged in 1783.

Your committee have carefully examined the petition and accompanying papers, but find no evidence from the rolls, or parol proof, establishing the allegations made, or any sufficient reason for granting the prayer of the petitioner, and therefore recommend it to be not allowed.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 177.

IN THE SENATE OF THE UNITED STATES.

APRIL 9, 1860.—Ordered to be printed.

Mr. LANE made the following

REPORT.

[To accompany bill S. 149.]

The Committee on Public Lands, to whom was referred "A bill (S. 149) making appropriations to supply a deficiency in the appropriations for the completion of the geological survey of Oregon and Washington Territories," have had the same under consideration, and report the bill back, with the recommendation that it do pass, and submit the following documents in support of the appropriations made in the bill.

GEOLOGICAL SURVEY OF OREGON AND WASHINGTON TERRITORIES.

Instructions to Dr. John Evans, appointed to institute geological researches, &c., on the main lines of the public land surveys about to be commenced in Oregon.

You have been appointed by the Department of the Interior, on the recommendation of Dr. David Dale Owen, United States geologist for Wisconsin and Iowa, (and other distinguished gentlemen,) to commence a geological and mineralogical survey west of the Cascade mountains, in Oregon Territory, beginning with the main lines of the public surveys, to wit: The principal meridian and base lines, to the immediate vicinity of which, it is apprehended, your researches will have to be confined in the *first* instance. Off those lines, to the extent *practicable*, you will endeavor to ascertain, barometrically, the elevation of the mountain ranges, peaks, and spurs of the points triangulated to, and when so doing you will have opportunity of also extending your mineralogical researches in the same direction.

The great object of your mission is to develop and make apprehensible whatever matters your professional skill shall deem to be most useful to the infant settlements of the Territory, whose people have sought to interest the government in the kind of scientific research required of you.

You will keep a detailed register of all your barometrical observations, and also a register of your geological and mineralogical re-

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searches, and the inferences you may from time to time draw from them, ever taking special care to identify the localities of your observation points with surveying stations noted on line, or, as the case may be, with the points triangulated to from line stations, whereby the localities which you desire to identify may be shown on the map of the lines in connection with all the operations connected with the survey.

Those two main lines will run through the heart of the country, and *all the operations and observations* therewith connected, whether such be linear, triangulating, barometrical, geological, or mineralogical, &c., it is desired to be comprehended and exhibited, ultimately, on general maps of each line.

It is desired that you will observe the latitude and longitude of the point where the base line will intersect the principal meridian, and also the longitude and latitude of the mound to be erected on the summit of the Cascade mountains, at the point thereon where the base line will, by law, terminate. You are requested also to observe the barometrical elevation of the same point.

You propose traveling to Oregon, (under the protection of a party journeying thither which is shortly to start from St. Louis,) and to return by the Isthmus; but as your outward route will be one connected with the great geological field explored by Dr. Owen on its northwest, (and who is now elaborating his official report thereon,) you will do well to call on the Doctor, at New Harmony, Indiana, before joining your traveling party at St. Louis, and have an understanding with him whether anything can be accomplished by you on the route to meet his views, in time for his forthcoming report, which would not delay your seasonable arrival in western Oregon to join Surveyor General Preston's party; and would such, in your judgment, produce inadmissible delay, you must postpone such researches until the return trip by the overland route, instead of by way of the Isthmus.

It is deemed important that, either going or returning, (if possible, the former would be preferred,) you should proceed as you desire doing, to the Falls of the Missouri, and cross the mountains, as you suggest, "by what is called the *Flathead Trail*, because, if any pass practicable for wagons should there be found, it might [as you estimate] shorten the land travel to Oregon some eight or nine degrees of longitude." The Missouri river you state to be navigable for steamboats to that point, nearly 2,600 miles above St. Louis, and also state that you speak from personal knowledge as to 2,300 miles of that distance. Should such a wagon pass be found at the point alluded to, its discovery would be an interesting incident in your enterprise, and one that may prove of much utility to emigrants and to Oregon.

You will be allowed the same compensation heretofore allotted to other assistant geologists, viz: six dollars per day, and your necessary expenses en route, transportation of instruments, and a hired hand to take charge of them throughout the service, but keeping within the limits of the means which the department has the power to devote to the purpose in view, viz: thirty-five hundred dollars. While in the field of operations, it is expected you will pay your own personal

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expenses. Your accounts will be rendered and adjusted in the usual mode, with which you are already familiar.

J. BUTTERFIELD,
Commissioner.

GENERAL LAND OFFICE, *March* 22, 1851.

GENERAL LAND OFFICE,
February 9, 1853.

SIR: I submit to your consideration the accompanying documents, confirmatory of the value of the geological reconnoissance of Oregon Territory, and of the adaptedness of Dr. John Evans for that particular service.

The documents submitted are as follows:

Documents A and B, being two resolutions of the legislature of Oregon, one passed in 1851 and the other in 1852, urging such work to be undertaken and continued by Dr. Evans.

Documents C and D, being resolutions of the *Academy of Science*, of Philadelphia, strongly recommending Dr. Evans as a geologist.

Document E. A memorial from some of the most distinguished citizens of Oregon, expressing their confidence in Dr. Evans, and desiring that the work may not be brought to a close for the want of a suitable appropriation.

Document F is a communication from the United States Surveyor General Preston, of Oregon City, representing the great value of Dr. Evans's labors and researches, developing the best *gold-bearing* region, the *coal-bearing* region, the *limestone* region; his discoveries of *iron* and *copper* ores, and the value of the geographical information imparted by him in advance of the public surveys; all of which go to establish the utility of the object for various *economical* considerations.

Document G is a succinct statement by Dr. Evans of his labors in Oregon. His unsettled account of expenditures to the 31st of December, 1852, amounts to $11,984 25.

Document H is the proposed item to be inserted in the appropriation bill, should you and the committee concur in the desire herein set forth.

I beg leave to conclude by assuring yourself and the committee of my decided conviction that *there never has yet been* an amount of *equally valuable* information obtained by our government, under the circumstances, at so cheap a rate as that charged by Dr. Evans for his services rendered, and which includes the payment made to his colaborers; and I trust that the committee may be induced to accede to the urgent request from so many scientific and other sources, by favoring the appropriation as asked for in document marked H.

I have the honor to be, with great respect, your obedient servant,

JOHN WILSON,
Commissioner.

Hon. G. S. HOUSTON,
Chairman Com. Ways and Means, House Representatives.

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GENERAL LAND OFFICE,
March 26, 1860.

I hereby certify that the within is a true copy as appears from the records and files of this office.

JOS. S. WILSON,
Commissioner.

GENERAL LAND OFFICE,
April 14, 1853.

SIR: Your letter of the 11th instant, with the proposition made to you by Governor Stevens, in his letter of the 11th instant, has received attentive consideration at this office, and obtained the sanction of the Secretary of the Interior. In your overland route to Oregon, therefore, in prosecuting to conclusion your geological reconnoissance of that Territory, you will coöperate with Governor Stevens in the mode proposed by him, making collections for his explorations, drawing up instructions for his guidance, furnishing him with all the geographical information you have collected in the service of this department, preparing the geological paper for his final report, and, according to his desire, "identifying yourself with the whole of that immense field upon which you have been engaged for so many years."

But such coöperation for the public benefit must, nevertheless, be made to consist with the main object of your appointment as geologist of Oregon, and to all due extent be made subservient thereto. It is therefore required that you make report to this department of the additional geological, topographical, and other valuable information obtained whilst coöperating in the mode suggested, to the extent that you may conceive such information to have a bearing on the purpose of your appointment as geologist for Oregon.

It is to be understood, however, that the expenses attendant on the desired coöperation here intended will not be made a charge against the limited amount recently appropriated by Congress for your duties, specified by the act of 3d March last, and concerning which you will be hereafter instructed.

Very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

DR. JOHN EVANS, *Geologist of Oregon,*
now at the seat of Government.

JANUARY 1, 1855.

I hereby certify that the foregoing is a true copy of the "copy" sent by the Commissioner of the Land Office.

RICHARD EVANS.

GENERAL LAND OFFICE, *January* 26, 1855.

SIR: I have to acknowledge the receipt of your letters of the following dates, viz:

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Of the 1st instant, submitting accounts and vouchers for expenditures on account of the geological reconnoissance, chargeable against the appropriation of $5,000 per act of 3d March, 1853, and on account of the North Pacific railroad expedition, under the direction of Governor Stevens, together with diagrams representing your route in the explorations made by you from Nebraska to Washington Territory; also inclosing a communication from Governor Stevens, dated San Francisco, California, November 14, 1854, addressed to this office, on the subject of the importance of the geological researches, &c., and finally requesting the Department of the Interior to ask Congress for an appropriation to cover your expenditures incurred over and above the sum appropriated as aforesaid, besides to enable you to continue the explorations in Washington Territory and in vicinity of the Coose bay; and also to obtain the authority to publish your report of the geology of Oregon and Washington Territories.

Yours of the 5th instant, submitting a statement of the circumstances attending your connection with Governor Stevens's North Pacific railroad expedition, accompanied by a copy of the governor's letter to the Secretary of War, of the 14th November last, in support of your claim for expenditures made by you on account of that branch of the service; and

Yours of the 13th instant, inclosing a copy of a memorial from citizens of California residing at San Francisco, to their delegates in Congress, on the subject of your geological explorations in Washington Territory, &c.

In reply to the foregoing communications, I have to say that the subject-matter was examined into and reported to the Secretary of the Interior on the 15th instant, with a recommendation that an appropriation may be asked from Congress "for expenses incurred by Dr. John Evans, in geological explorations of Oregon, Washington, &c., and for the completion of those explorations in Washington Territory and on Coose bay, $23,560, and the Department of the Interior is hereby authorized to have the report of Dr. Evans published under its direction, the expenses to be paid out of any money in the treasury not otherwise appropriated."*

The above sum comprises the following items, viz:

Balance claimed by you for expenditures made over and above the appropriation of $5,000, 3d March, 1853.....	$5,694 25
Expenditures under Governor Stevens's North Pacific railroad service.....	4,867 50
To complete the reconnoissance in Washington Territory, as asked for by the legislature.....	10,000 00
Coose Bay exploration.....	3,000 00

Very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

Dr. JOHN EVANS,
United States Geologist.

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*Authority to publish the report passed the House, but was stricken out by the Senate. J. E.

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GENERAL LAND OFFICE, *January* 23, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th instant, on the subject of the publication of the geological report of Oregon and Washington Territories, by Dr. John Evans, now before the Committee on Public Lands.

In compliance with your request, I would respectfully refer you to the inclosed copy of an extract from the annual report of this office to the Secretary of the Interior, dated November 30, 1857, giving an account of the institution and progress of the geological survey as above stated, by Dr. Evans, of the various appropriations made by Congress from time to time for that purpose, and of the estimate furnished by Mr. Evans of the probable cost of publishing the same, and which, it is believed, will be found to embrace all the information desired under the call made by your letter.

I have the honor to be, very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. JOHN G. DAVIS,
House of Representatives, Washington, D. C.

Extract from the annual report of the Commissioner of the General Land Office to the Secretary of the Interior, dated November 30, 1857.

GEOLOGICAL RECONNOISSANCE IN OREGON AND WASHINGTON TERRITORIES.

In March, 1851, it was determined by the Secretary of the Interior, under the third section of the act of 27th September, 1850, pointing out the manner of making surveys in Oregon, to connect with the land surveys in Oregon a geological reconnoissance and exploration. With this in view, a transfer from a fund for similar service in the northwest was ordered, of..... $3,500 00

And Dr. John Evans was directed, on the 22d March, 1851, to proceed overland, to ascertain the general geology of the country west of the Missouri river towards the Rocky mountains; to reconnoiter for practicable wagon routes leading to Oregon over the Rocky mountains; and when there, to aid the surveyor general in obtaining the elevations of the country along the principal base and meridian lines, with the latitude and longitude at the intersection of those lines; and to keep his expenditures within the limits of the means placed by the department under his control.

On the 3d March, 1853, Congress made two separate appropriations: one of $11,984 25, for expenses incurred in a geological reconnoissance in Oregon, undertaken in 1851; and another of $5,000, for completing that geological reconnoissance. Whereupon, on the 19th April, 1853, the geologist was instructed to complete the service under the latter appropriation, and make his final report thereon; both of which appropriations amounted to..... 16,984 25

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And on 3d March, 1855, Congress appropriated for this purpose the additional sum of	$23,560 00
Making an aggregate of	44,044 25

One item of the last appropriation was $5,692 25, on account of excess of his expenditures over and above the $5,000, per act 3d March, 1853; another item was $13,000 25, for the completion of the geological explorations in Oregon and Washington Territories.

In placing the latter item under the control of the geologist, on March 20, 1855, he was instructed to complete the work, make final report, and not to exceed it in his disbursements.

The estimates on which the appropriation of $23,560 was based, included a third item of	4,867 50
Which had been expended by Dr. Evans in coöperating with the expedition, under the authority of the War Department, for making the extreme northern railroad exploration from the Missouri to Washington Territory, thereby reducing to this extent the amount which has been appropriated for geological services in Oregon and Washington to	39,176 75

In the adjustment of Dr. Evans's accounts to the 4th March last, it is found that he has again exceeded the amount appropriated for the completion of the work, and incurred an additional liability of $3,574 70, to the liquidation of which there are no means applicable under existing laws.

The geologist, in a communication of the 13th November, 1857, states as follows: That "rich deposits of semi-bituminous coal have been discovered cropping out at various points from the British possessions to near the boundary of California, and are almost inexhaustible in quantity, and accessible to sail and steam navigation."

"Ores of iron, lead, platinum, and copper have been discovered; also marbles, other limestones, and valuable rocks for building purposes. The analysis of the coals, limestones, and minerals, is complete; also many of the soils."

One hundred and five illustrations, and two hundred and seventy-seven pages of manuscript are completed, ready for the engraver and printer. "All the illustrations and analyses are in sufficient progress to keep the engraver constantly employed until the completion of the report."

The illustrations and manuscript referred to he has filed in this office; but the complete report which antecedent instructions required at his hands has not yet been made.

He further states that "the report will be about two thirds the size of Dr. Owen's report, and will cost, if published in the same style, $26,526, including the cost of preparing all the maps and other illustrations." This sum, together with his claimed balance on account

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of his expenditure over and above the last appropriation, he states, "will amount to $30,000."

The facts in regard to the origin of this service, and the appropriation for its completion at different times, with the progress in it, as reported by the geologist, are respectfully submitted for the consideration of Congress.

Petition of the citizens of Saint Louis, Missouri, praying the immediate publication of Dr. Evans's final report of geological survey in Oregon and Washington Territories.

Whereas the Academy of Science, of St. Louis, have learned, with much interest, that the general geological survey of Oregon and Washington Territories, conducted by Dr. John Evans, under the authority of the United States government, in the course of which valuable observations have been made upon the geography, the agricultural and mineral resources, and the natural history of these Territories, has been completed, and a final report prepared for publication when authorized by Congress: Therefore,

Resolved, That the Academy of Science, of St. Louis, fully appreciating the importance of Dr. Evans's explorations and labors, and believing that his discoveries promise to be of much value, when adequately made known, to commerce, the arts, agriculture, and science, would respectfully beg leave to urge upon Congress the immediate publication of Dr. Evans's final report, in the form and manner heretofore recommended by the Commissioner of the General Land Office, and under the personal supervision of the geologist.

Resolved, That a copy of the above preamble and resolution, signed by the president and secretary, be transmitted to the presiding officer of each house of Congress.

B. F. SHUMARD,
President Academy of Science, St. Louis.

J. S. B. ALLEQUE,
Recording Secretary.

GENERAL LAND OFFICE, *May* 22, 1858.

SIR: I have the honor to inclose herewith a communication from John Evans, sent to this office, to-day, by the Hon. John G. Davis, of the Committee on Public Lands, asking the recommendation of the department for the publication of additional copies of the report of the geological survey of Oregon and Washington Territories.

The order of the House to publish the work is evidence to us of the estimate that that branch of Congress has of its merits, and as the subject is a scientific one, of great practical utility and interest to the country, the recommendation of 1,100 additional copies, to be distrib-

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uted as follows, say 500 for the Department of the Interior, 500 for this office, and 100 for the use of Mr. Evans, the geologist, is respectfully suggested.

I am, very respectfully,

THOMAS A. HENDRICKS,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Department of the Interior.

GENERAL LAND OFFICE, *March* 26, 1860.

I hereby certify that the within is a true copy, as appears from the records and files of this office.

JOS. S. WILSON,
Commissioner.

WAR DEPARTMENT,
Washington, January 26, 1858.

SIR: In reply to your request for my views respecting the publication of the report of Dr. John Evans, I have to state that the examinations of Dr. Evans extended over lines 24,000 miles in length, embracing the regions traversed by the route explored for a Pacific railroad near the parallel of 47° north latitude; that collections are made along all the lines passed over of the prevailing rocks, minerals, and soils which, in connection with other information gathered, exhibit the character and capabilities of the regions explored, their fitness for occupation and settlement, the facilities they afford for the construction of rail and common roads—all of which, I regard of very great value, not only in connection with the project of constructing a railroad to the Pacific, but with the military operations of the country.

The itineraries and topographical sketches of Dr. Evans likewise give useful information. For these reasons, I esteem the publication of this report to be important.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. JOHN G. DAVIS,
House of Representatives.

GENERAL LAND OFFICE, *January* 26, 1855.

SIR: I have to acknowledge the receipt of your letters of the following dates, viz:

Of the 1st instant, submitting accounts and vouchers for expenditures on account of the geological reconnoissance, chargeable against the appropriation of $5,000, per act of 3d March, 1853, and on account

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of the North Pacific railroad expedition under the direction of Governor Stevens, together with diagrams representing your route in the explorations made by you from Nebraska to Washington Territory; also inclosing a communication from Governor Stevens, dated San Francisco, California, November 14, 1854, addressed to this office on the subject of the importance of the geological researches, &c., and finally requesting the Department of the Interior to ask Congress for an appropriation to cover your expenditures incurred over and above the sum appropriated as aforesaid, besides to enable you to continue the explorations in Washington Territory and in vicinity of the Coose bay, and also to obtain the authority to publish your report of the geology of Oregon and Washington Territories.

Yours of the 5th instant, submitting a statement of the circumstances attending your connection with Governor Stevens' North Pacific railroad expedition, accompanied by a copy of the governor's letter to the Secretary of War, of the 14th November last, in support of your claim for expenditures made by you on account of that branch of the service; and

Yours of the 13th instant, inclosing a copy of a memorial from citizens of California residing at San Francisco, to their delegates in Congress on the subject of your geological explorations in Washington Territory, &c.

In reply to the foregoing communications, I have to say that the subject-matter was examined into and reported to the Secretary of the Interior on the 15th instant, with a recommendation that an appropriation may be asked from Congress, "For expenses incurred by Dr. John Evans in geological explorations of Oregon, Washington, &c., and for the completion of those explorations in Washington Territory and on Coose bay, $23,560; and the Department of the Interior is hereby authorized to have the report of Dr. Evans published under its direction, the expenses to be paid out of any money in the treasury not otherwise appropriated."* The above sum comprises the following items, viz:

Balance claimed by you for expenditures made over and above the appropriation of $5,000, 3d March, 1853	$5,694 25
Expenditures under Governor Stevens, North Pacific railroad service	4,867 50
To complete the reconnoissance in Washington Territory, as asked by the legislature	10,000 00
Coose Bay exploration	3,000 00

Very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

Dr. JOHN EVANS,
United States Geologist.

* This clause passed the House, but was lost in the Senate, where its necessity was not fully explained.

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GENERAL LAND OFFICE, *March* 26, 1860.

I hereby certify that the within is a true copy, as appears from the records and files of this office.

JOSEPH S. WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
March 8, 1860.

SIR: I have the honor to acknowledge the receipt, on the 24th ultimo, and also on the 6th instant, a copy of the following resolution of the Committee of Public Lands, adopted February 21, 1860, viz:

"*Resolved*, That the Secretary of the Interior be, and he is hereby, requested to furnish estimates of expenses incurred in the geological survey of Oregon and Washington Territories, not provided for by previous appropriations, for the analyses of soils, coals, and ores, and in the preparation of the final report for publication; and also for any information that may be in his possession, as to the results of these analyses, so far as they may serve to develop the agricultural and mineral resources of the country explored."

In reply to the first branch of this resolution, calling for estimates, I would respectfully state that it will be perceived, from the inclosed copy of a communication of my predecessor of the 7th February, 1857, addressed to the Commissioner of the General Land Office, that in obedience to the requirements of the act of Congress of the 21st July, 1852, (Statutes, vol. 10, p. 12,) this department has not authorized any expenses for geological surveys in Oregon or Washington Territories beyond the amount appropriated therefor by Congress. The last appropriation was made by act of 3d March, 1855, (Statutes, vol 10, p. 651,) "for expenses incurred by Dr. John Evans in geological explorations in Oregon and Washington Territories, &c., and for the completion of those explorations in Washington Territory, and on Coose bay, $23,560."

Under date of the 20th March, 1855, the General Land Office informed Dr. Evans of this appropriation, and instructed him to complete his labors, and make his report.

On the 18th August following, he was again instructed to close his labors under the then existing appropriation, as no additional expenditure whatever was contemplated by this department in regard to geological reconnoissances in Oregon and Washington.

The geologist, however, afterwards rendered accounts of expenditures exceeding the sum appropriated; and in April, 1857, the General Land Office approved his accounts and vouchers, to an amount exceeding the appropriation by $3,574 70. This course of action was taken without advice from this department, and was in contravention of established regulations, which inhibit the admission of an amount or balance due from the United States to any party where there is no appropriation out of which such balance can be paid.

Since that time Dr. Evans has informed the department that he has

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incurred further liabilities to scientific gentlemen for making analyses of minerals, soils, ores, &c., &c., amounting to $6,984 50.—(See copy of his letter of 14th November, 1859, to Commissioner of the General Land Office, and inclosures herewith.)

From all the papers inclosed, it will be perceived, first, that this department has not authorized any expenditures beyond the appropriations for geological surveys in Oregon and Washington, and is not in such a position as to report that there is any deficiency, to meet which it is under obligation to submit an estimate for a further appropriation. Second, That Dr. Evans urgently desires a further appropriation of both the amounts above mentioned. In regard to the propriety of making these appropriations, the committee and the House have the means of judging; and as the question is one peculiarly addressing itself to the discretion of the House, it is deemed proper, under all the circumstances, that this department should not submit any recommendation on the subject.

In reply to the other branch of the resolution, I have the honor to state that the information as to the results of analyses, as I believe, is contained in the papers which were transmitted to the House of Representatives by the President on the 13th May, 1858, and an abstract thereof, prepared by Dr. Evans, will be found among the copies herewith inclosed. I have never had occasion to investigate these results, with a view of forming a reliable opinion of their value. They were favorably mentioned by the General Land Office, in a letter of 17th June, 1857, addressed to Hon. J. Patton Anderson, (Thirty-fourth Congress, third session, House Reports, vol. 1, No. 171,) and in the annual report of that office in 1857, (Ex. Doc., first session, Thirty-fifth Congress, vol. 2, part 1, pages 95 and 96,) as also in a letter addressed by the Commissioner to this department, to which I replied on the 27th of the same month.

Copies of this correspondence are likewise inclosed for your information.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

Hon. ELI THAYER,
Chairman Com. Public Lands, U. S. House of Representatives.

GENERAL LAND OFFICE, *May* 22, 1858.

SIR: I have the honor to inclose herewith a communication from John Evans, sent to this office to-day by the Hon. John G. Davis, of the Committee on Public Lands, asking the recommendation of the department for the publication of additional copies of the report of the geological survey of Oregon and Washington Territories.

The order of the House to publish the work is evidence to us of the estimate that that branch of Congress has of its merits; and, as the subject is a scientific one, of great practical utility and interest to the country, I respectfully suggest the recommendation of 1,100 additional copies, to be distributed as follows: Say 500 for the Department of the

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Interior, 500 for this office, and 100 copies for Mr. Evans, the geologist.

I am, very respectfully,

THOS. A. HENDRICKS,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Department of the Interior.

DEPARTMENT OF THE INTERIOR,
March 9, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th ultimo, inclosing Senate bill No. 149, entitled "A bill making appropriations for the completion of the geological survey of Oregon and Washington Territories," and suggesting that the committee may be furnished with the views of this department thereon.

This bill proposes to make appropriations of two amounts, viz: $3,574 70 and $6,984 50. Total, $10,559 20.

As furnishing the only expression of the views of the department which I deem proper, I have the honor herewith to inclose a copy of my letter of yesterday's date, addressed to the Hon. Eli Thayer, chairman of the Committee on Public Lands of the House of Representatives, in response to a resolution of that committee, of the 21st ultimo, calling for information as to the expenses incurred in the geological survey of Oregon and Washington Territories, and the results of analyses of soils, coals, and ores.

The bill and accompanying papers are herewith respectfully returned.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. R. W. JOHNSON,
Chairman Committee on Public Lands, U. S. Senate.

WASHINGTON, *January* 21, 1858.

DEAR SIR: I understand that a question has been raised as to the propriety of the course pursued by Dr. John Evans in prosecuting his surveys of Oregon and Washington Territories after appropriations had been made, the apparent object of which was to bring that exploration to a close. On the inception of that enterprise the distinct understanding was, that appropriations would be made from year to year as the necessities of the service required This understanding was not had from Congress or from any member, but from the uniform course pursued in all cases of surveys and for geological explorations; and when Dr. Evans started on his enterprise, the distinct understanding he had with me was that he should prosecute his *labors* with all diligence and economy to completion; he, however, taking the risk of the appropriations being made. No other course could have been

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taken at that time by the office under my direction, for the reason that the field of his labors was almost unknown, was without mail routes or post offices at that time; and if the office had been disposed to put an entire stop to his operations, it could not have done so, at any time during the greater part of his services, for it would not have been able to communicate with him.

I make this statement to show that Dr. Evans was not guilty of disobedience of orders, or of disrespect to Congress or the department, but was carrying out in good faith what he supposed were the wishes of both.

Truly yours,

JOHN WILSON.

Hon. THOMAS A. HENDRICKS,
Commissioner General Land Office, Washington.

GENERAL LAND OFFICE, *March* 26, 1860.

I hereby certify that the within is a true copy, as appears from the records and files of this office.

JOS. S. WILSON,
Commissioner.

WASHINGTON, *January* 26, 1858.

DEAR SIR: I understand that the report of Dr. Evans of the explorations and surveys made by him in the passes of the Rocky mountains, and in Oregon and Washington Territories, is now before Congress on the question of printing it, and that an objection has been raised because of supposed disobedience of orders by him. I was Commissioner of the General Land Office at the time this enterprise was undertaken, and the object sought was the establishing of the geographical position of certain important points, and the connection of the geology of those regions with the explorations reported by Dr. D. D. Owen. Congress at that time was particularly anxious to limit the appropriations of each year to the services performed during the year. It was well understood, when Dr. Evans started on this enterprise, that the fields of his labors were so remote, and almost wholly without mail routes and post offices, that but little communication could be had with him, and then only at rare intervals. He possessed, however, the entire confidence of the office, and we were perfectly sure that his duties would be faithfully and economically discharged. The result of his labors, in a most eminent degree, has proved that that confidence was well founded. As in the case of Dr. Owen, it was supposed that the work would go steadily on to completion, as the interests and honor of the country alike required. In pursuing his explorations, therefore, as he did, he supposed that he was carrying out the views of the office, which was the fact; and when the office would have recalled him, if I remember aright, we did not know where to find him. From every charge of disobedience or contumely I most heartily and entirely exonerate him.

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The publication of Dr. Evans's work is eagerly looked for by the people of the northwest. The publication of Dr. Owens's work opened up to our citizens a new region, and the rapid settlement of Iowa, Wisconsin, and Minnesota was the consequence. The publication of Dr. Evans's report is pregnant with still more important results. Every patriot is anxiously looking for the means of connecting, by suitable means of transit, our Atlantic and Pacific possessions. However wisely a railroad scheme may be devised, it will fail, if there are not sufficient settlements to protect themselves and the road against the demonstrations of wandering Indians or unprincipled white men. Those settlements will not be made unless the people are satisfied that there are sufficient lands in different localities to justify them in doing so. The publication of Dr. Evans's report will furnish this information, and, when furnished, the energy and enterprise of the western people will soon people that vast region, and make the wilderness to bloom and blossom as the rose. I really do not know any object now before Congress of more vital interest to the country at large, and especially to the people of the great west, and I earnestly hope that Congress may at once order the publication of this report, in a manner commensurate with its importance and the dignity of the country.

Very truly, yours,

JOHN WILSON.

Hon. JOHN G. DAVIS,
House of Representatives.

WASHINGTON, *November* 14, 1860.

SIR: Permit me to state most respectfully, that the cost of analyses of coals, soils, and minerals, and the preparation of maps and other illustrations for the report of the geological survey of Oregon and Washington Territories, ordered to be printed at the last session of Congress, amounts to $6,984 50. This sum, together with the balance of $3,574 70 due me on the adjustment of my accounts at the General Land Office, to 4th March, 1859, amounts to $10,559 20.

The analysis of soils is very tedious and expensive. By reference to the Patent Office Report for 1858, page 29, you will perceive that Dr. Charles T. Jackson, chemist, of Boston, states "that the analysis of a single soil occupies from twenty to twenty-five days, and that no chemist can properly attend to more than one at a time."

In order to make the analysis perfectly reliable and most useful to the country, I have employed the most skillful and well-known chemists in the United States, Dr. Charles T. Jackson, of Boston; Professor A. Litton, St. Louis, Missouri; and Dr. D. D. Owen, of Indiana. Dr. Litton has been employed more than two years on this work.

Dr. Jackson has analyzed:

Soils	16
Coals	5
Iron ores	4
Copper	1

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Lead and silver	2
Native sulphur	1
	29

Dr. Litton has analyzed:

Soils	23
Iron ores	2
Platinum	2
Limestones	5
Coals	6
Basaltic rock	1
	38

Dr. Owen has analyzed:

Coals and lignites	15
Iron ores	4
Soils	3
	22

Dr. Joseph Leidy, Academy of Sciences, Philadelphia, and Dr. Shumard, have made the drawings and descriptions of fossils, to determine the geological age of each formation. These analyses comprise all the prevailing soils and minerals from Kansas to the Pacific, and from the British possessions on the north to California on the south.

Agricultural chemistry is now attracting much attention, and our citizens engaged in such pursuits are now realizing the advantage of the adaptation of the crop to the constituents of the various soils, and the value of knowing what kind of fertilizers are needed to supply deficiencies where other crops are desired. Some of the results of the survey are very interesting, and are attracting much attention in the scientific world. In response to a verbal request from the late Acting Commissioner, I will, to-morrow or the next day, make a brief statement of some of the more important results to be used in your annual report to Congress, if you deem it expedient so to do.

In conclusion, I would most respectfully but urgently suggest the propriety that the General Land Office should recommend the printing of at least 5,000 extra copies of the *agricultural* portion of the report. If printed without the maps and other illustrations, the expense would be very trifling compared with the advantages that would be derived by all who may hereafter settle this vast region in the west.

I have the honor to be, very respectfully,

JOHN EVANS,

Late Geologist for Oregon and Washington Territories.

Hon. SAMUEL A. SMITH,

Commissioner General Land Office.

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Memorandum of the results of the Geological Survey of Oregon and Washington Territories, and the circumstances attending its institution and progress, fromofficial sources.

In March, 1851, it was determined by the Secretary of the Interior under the third section of act of 27th September, 1850, providing for the manner of making surveys in Oregon, to connect with the land surveys a geological reconnoissance and exploration. It was also deemed indispensable to the proper construction of maps of the country, that the latitude and longitude of the intersection of the base and meridian lines should be determined.

To accomplish this object a transfer was made from a fund for similar service in the northwest of $3,500, and on the 22d March, 1851, Dr. John Evans was directed to proceed overland to the Pacific ocean, to ascertain the general geology of the country en route; to examine all the passes in the Rocky mountains for practicable wagon routes to Oregon; to obtain the elevations of the mountain ranges crossed, and along the base and meridian lines in that territory; and to determine the latitude and longitude of their intersection.

The sum placed at the disposal of the geologist for this purpose, $3,500, was not sufficient to pay the necessary expenses of the overland journey to the Pacific. But in view of the importance of connecting our eastern country with the settlements on the Pacific by wagon or railroads as a great public measure of vital importance to the interests of the people, and as the practicability of establishing such communication depended very much upon the agricultural and mineral resources of the country en route, the Land Office having entire confidence in the geologist, that the duties confided to his charge would be performed in the most faithful and economical manner, and as the field of his labors was so remote, and at that time almost wholly without mail facilities, so that but little if any communication could be had with him, he was charged with their performance with the distinct understanding that the work would go on to completion, and that the necessary means would be supplied to meet the expenses incurred.

In December, 1852, the geologist returned to Washington, and reported to the General Land Office the results of the survey. On the 3d March, 1853, Congress, in answer to petitions from the legislature of Oregon for 1851 and 1852, made an appropriation of $11,984 25 "for expenses incurred in a geological survey of Oregon, and $5,000 to complete the reconnoissance." Whereupon, on the 19th of April, 1853, the geologist was instructed to return to the field of his labors and complete the survey. He was also instructed, at the same time, "to coöperate with Governor I. I. Stevens, as the geologist of his expedition and explorations for a railroad route to the Pacific near the forty-seventh parallel of north latitude, and to communicate all the geographical information obtained in former explorations in that region for the guidance of his several sub-corps." These duties were performed by the geologist, and he returned to Washington to prepare his final report. But Congress, in answer to petitions from the legislatures of Oregon and Washington, and citizens of California engaged in agri-

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cultural, commercial, and mining pursuits, made a further appropriation of $23,560. Of this amount $4,692 25 was "for expenses incurred in the coöperation with Governor Stevens, under the War Department, and $13,000 for more detailed examinations in the coal regions of Oregon and Washington Territories; the remainder, $5,692 25 was for expenses incurred in the prosecution of the survey, in addition to the appropriation of $5,000 made on the 19th April, 1853. To the clause in the general appropriation bill making this last appropriation of $23,560 was added a proviso "for the publication of the report, payable out of any money in the treasury not otherwise appropriated." This clause passed the House, but was lost in the Senate, where the reason for its insertion had not been explained.

The object of the proviso was, that the analysis of the coals, ores, soils, and rocks, might be made at the east, during the progress of the survey, thus avoiding the long delay which has attended the publication of many scientific reports by Congress, so that the scientific as well as practical results of the survey might be ready for distribution in a few months after the completion of the field-work. The analysis of a single soil requires the undivided attention of the chemist from twenty to twenty-five days.

These results comprise a careful analysis of the prevailing soils, rocks, coals, and minerals along the entire overland route to the Pacific, and in Oregon and Washington Territories, from the boundary of California to the British possessions on the north, with lateral excursions both north and south of the Missouri and Nebraska, and along the eastern and western base of the Rocky mountains, including all the northern passes in that range, exhibiting the fitness of the country for settlement, and the practicability of wagon and railroads. Ores of lead, iron, copper, platinum, and gold have been discovered in various localities; also, marbles and other valuable limestones for building purposes.

The coals of Oregon and Washington Territories are inexhaustible in quantity, and accessible to sail and steam navigation.

The great lignite bed (tertiary coal) of the upper Missouri in Nebraska, extends over eight degrees of longitude and seven of latitude. This deposit is separated into seven seams, divided by, or interstratified with deposits of clays, sandstones, and grit. A careful analysis of specimens from various localities gives an average of thirty-eight per cent. of carbon in coke; fifty-three per cent. of volatile gasses and moisture, and nine per cent. of ashes, (white.) This deposit of legnite is situated in that portion of the country which is most destitute of timber, and the analysis shows it to be of value (by coking) for fuel and means of transportation.

The legislatures of Oregon and Washington Territories, have passed resolutions, strongly recommending the publication of the report, as containing "much valuable information as to the localities in the country explored, possessing mineral and agricultural wealth." These memorials and other papers substantiating all the facts alluded to in the foregoing statement, are on file with the Committee on Public Lands in the House or on the files of the Clerk's office.

The Academy of Sciences, St. Louis, and the Academy of Science,

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Philadelphia, also earnestly desire the publication of the report, "as containing information valuable to commerce, the arts, and to science."

The Secretary of War also recommends the publication of the report "as of very great importance as exhibiting the character and capabilities of the country explored, its fitness for occupation, and settlement, the facilities afforded for the construction of rail and common roads, and in connection with the military operations of the country."

Memorial to Congress from the Academy of Sciences, Philadelphia.

ACADEMY OF NATURAL SCIENCES,
Philadelphia, February, 1860.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The undersigned, a committee appointed by the Academy of Natural Sciences of Philadelphia, for the purpose of aiding the efforts of Dr. J. Evans to procure the meteorite now lying near Port Orford, Oregon, respectfully represent: That the discovery and preservation of meteorites is an object of great solicitude to scientific men, and that such specimens, besides the interest which attaches to them as the only objects we can reach foreign to the mass of our earth, are considered as possessing great value in scientific collections; and understanding that the one observed by Dr. Evans is so situated that it can be transported to the coast for shipment at a comparatively small cost, they would respectfully urge the great importance of securing it as soon as practicable, since, by the delay, it may become so covered with earth that the knowledge of its position may be lost.

JOHN L. LECONTE,
SAMUEL POWEL,
W. W. RUSHENBERGER.
ISAAC LEE, *President.*
ROBERT BRIDGES, M. D.,
First Vice-President.
JOHN LECONTE,
Second Vice-President.
THOMAS STEWARDSON,
Corresponding Secretary.
B. HOWARD RAND, M. D.,
Recording Secretary.

ST. LOUIS, *January* 24, 1860.

SIR: In accordance with a resolution of the Academy of Science of St. Louis, the duty devolves upon me of addressing you, with a view of securing the influence of your institution in memorializing the Congress of the United States to have removed from Oregon to the city of Washington an immense meteorite, found by Dr. John Evans, United

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States Geologist, in his geological reconnoissance of that territory, and also to procure geodetic measurement of the distance of its locality from Mount Pitt.

I enter upon this duty the more cheerfully as I feel that in doing so I am only conforming to the implied wishes of all true lovers of science, not only in this country, but in the Old World.

The question of the origin of these mysterious bodies is one of the deepest interest, the solution of which, perhaps, involves others of still higher moment. Are they of terrestrial origin? The secret powers of nature, which are at work in the deep and silent recesses of the earth, may become more fully comprehended, and the solution may afford important aid to the future development of chemical philosophy. Are they products from volcanoes existing in the moon? They become objects of even more than paramount value in assuring us that the constitution of the planetary spheres are almost certainly identical with that of our own earthly habitation.

We learn from the analysis of Professor Jackson, whose character as a chemist assures us of the accuracy of the determination, that this aerolite contains chrysolites, and is nearly identical in chemical constitution with that found by the celebrated Pallas on the frozen plains of Siberia. The latter was so highly prized by the government of Russia that it was transferred from this rigorous and inhospitable region to the imperial cabinet at St. Petersburg. Should our government feel less concern in treasuring up these great objects of natural curiosity and overweening interest among the scientific and learned, or should it be less munificent in advancing the great interests of human knowledge? The arts of modern civilization and refinement are based upon such knowledge, and that government which most efficiently promotes the advancement of science most effectually promotes its own interests, the interests of humanity, and the perpetuity of its own national glory.

Trusting that you will use every available means to secure the removal of this meteorite from Oregon to the cabinet of the Smithsonian Institution, and promising, if necessary, such aid as our infant academy may be able to afford, I have the honor to subscribe myself, your most obedient servant,

H. A. PROUT,
President of the Academy of Science, St. Louis.

Professor JOSEPH HENRY,
Secretary of the Smithsonian Institution.

WASHINGTON, *November* 21, 1859.

SIR: In compliance with the verbal request alluded to in my letter of the 14th instant, I have the honor to present a few of the results of the geological survey of Oregon and Washington Territories, contained in the report ordered to be printed at the last special session of Congress.

Forty-two soils, twenty-six coals, ten iron ores, three of lead, two of platinum, five limestones, all from different localities, have been carefully analyzed by Professor A. Litton, of St. Louis, Dr. Charles T.

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Jackson, of Boston, and Dr. D. D. Owen, of Indiana. Discoveries of native sulphur, salt springs in various localities, rock salt, marble, gypsum, ocher, and other valuable minerals have been discovered. The boundaries of the different gold regions have also been laid down on the geological map as far as ascertained. Three of the discoveries of iron ore are located in the Willamette Valley, and one near Astoria, mouth Columbia river, and two on the western slope Cascade range of mountains. Iron ore was also discovered in the Rogue River mountains. Our specimen from that region proves, on analysis by Dr. Jackson, to be meteoric, and is of great scientific interest. It is deemed advisable, by scientific men who have been made acquainted with the discovery, that the whole mass should be obtained by the government, and placed in the Smithsonian Institution.

On a large tributary of the Columbia, the Kooskooskie river, is a mountain of iron ore, more lofty than the celebrated iron mountain in Missouri, and fully equal in richness. The analysis of surface specimens by Dr. Owen, which probably for ages have been exposed to atmospheric influences, gives the following results:

Water	0.05	
Silica	1.90	
Peroxid of iron	89.95	Metallic iron.....62.993
Alumina	6.90	
Alkalies	0.10	
Loss	1.10	
	100.00	

In the main range of the Bitter Root mountains similar ore was discovered; also, gold in quartz veins, in talcose slates, and platinum. Gold was also found in the same latitudes in the passes of the Rocky mountains.

Lead mines were discovered on the shores of Flat Bow lake and river, tributaries of the Columbia, in Washington Territory, and north of this river and lake in the British possessions; also silver mines in the same locality. The gold fields of Rogue river are quite extensive, extending along the coast for a hundred miles, and from the ocean to the valleys east of the Coast range of mountains. Copper was also found in these mountains. Gold-bearing slates prevail in the Umpqua valley, near the head waters of its southeastern branch. The indications are that it will be found in sufficient quantities to justify mining. Copper was also found in quartz veins, but not sufficient to justify mining. Saliferous sandstone attains a great thickness in the valley of the Umpqua, and salt springs are numerous.

The Colville gold mines extend from a few miles north of the Spokane river far into the British possessions, connecting in a northwest direction with the Frazer's and Thompson's river gold-field. Eastward fifty miles from the Colville mines, the geology of the country changes, and the talcose slates give place to marbles, magnesian limestone, gypsum, &c., &c. The soil in these mountain regions is impregnated with fine gold, which, when the country becomes settled,

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and suitable machinery and supplies can be obtained at reasonable cost, will prove very productive. Along the shores of the Pacific, in the neighborhood of Randolph and Port Orford, scales of platinum are mingled with gold in the black sand at the bottom of rivulets and along the sea-shore. Some sand collected in one of these rivulets, on analysis by Dr. Litton, of St. Louis, yielded 45 per cent. of platinum.

Sand from Cape Blanco, near Port Orford, Oregon, also yielded, by washing, 45 per cent. of platinum ore.

From the residue of the above sand left by washing, in Oregon Territory, for gold, by treating with nitromuriatic acid, was obtained a solution, out of which was obtained 44.35 per cent. of platinum.

The residue insoluble in nitromuriatic acid, consisted principally of particles of osmium, iridium, and sand, and amounted to 38.31 per cent.

Some of the soils of the Pacific coast and the Nez Percés country, between the Bitter Root and Cascade mountains, are very remarkable. They are similar in their constituents, and probably equal, to the celebrated soil near Olmutz, Moravia, which has been cropped for 160 years successively, without either manure or naked fallow, yielding every season abundant crops. This is owing, in a great measure, to the vicinity of mountain ranges, containing augite, hornblende, and serpentine, or talcose, chlorite, and magnesian schists, which prevail in the vicinity, the decomposition of which, and the vegetable matter brought down by abundant rains and the melting of snow in the spring, replenishes the exhaustion of the soil consequent upon the production of plentiful crops. In the Umpqua valley, near Winchester, the soil, over a considerable extent of country, yielded, on an average, 20 per cent. of iron, almost an iron ore; and yet the other constituents are of such a nature as to render it fine agricultural land. On a portion of the farm of General Lane, in this vicinity, the crop of wheat, the past season, was thirty bushels to the acre, on virgin soil, that had only been plowed once five years ago, and never manured.

The prairies abounding in the Rogue River mountains are exceedingly fertile. Native clover, and other grasses in season, reach the shoulders riding on horseback, and the woodlands surrounding them are frequently filled with fine grass and flowers, instead of brushy undergrowth. These prairies are of great importance, furnishing, as they do, means of subsistence in the neighborhood, for the miners engaged in the gold regions of Rogue river.

The following is the analysis of one of the prairie soils alluded to, made by Dr. Jackson:

1,000 grains of this soil separated mechanically into—

Gravel	230
Sand	258
Fine brown loam	512

On analysis of the fine loam, it was found to consist of, in 100 grains—

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Organic (vegetable) matter	29.400
Insoluble silicates	59.000
Peroxyd of iron and manganese	4.750
Alumina	5.250
Lime	0.185
Potash and soda	0.380
Magnesia	8.027
Phosphoric acid	0.500
Sulphuric acid	0.034
Chlorine	0.031
	99.557

The following is an analysis of one of the soils referred to, made by Dr. D. D. Owen:

Nez Percés country:

Moisture expelled at 400° F	6.250
Organic matter	9.550
Insoluble silicates	7.2656
Lime	.320
Oxyd of iron	5.530
Alumina	3.800
Sulphuric acid	.090
Potash	2.280
Magnesia	1.080
Phosphoric acid	.220
Loss	.230
	100.000

The coal fields of Oregon and Washington Territories are quite extensive, extending from near the boundary of California to the British possessions on the north, cropping out at various points throughout the entire region. These coals do not belong to the true coal measures, but are of the miocene tertiary formation. They are, however, of great thickness; and, in some localities, have been so altered and compressed by volcanic action, as that, in appearance and in their proximate constituents, they approach near to the composition of the coals of the western States.

The following analyses are from some of the most important localities:

Specimen from Fitzhugh's mine, Bellingham bay, analyzed by Dr. Owen:

Carbon	68.454
Hydrogen	6.666
Sulphur	1.000
Water expelled at 212 F	7.000
Ashes, (reddish brown)	3.400
Oxygen, nitrogen, and loss	13.480

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The same calculated for 100 parts of dry combustible matter:

Carbon	76.399
Hydrogen	7.439
Sulphur	1.116
Oxygen, nitrogen, and loss	15.046

Specimen from Bigelow's coal mines, Dwamish river, analyzed by Dr. Owen:

Specific gravity	1.495		
Total volatile matter	36.8	Moisture	12.00
		Volatile combustible gases	24.80
Coke	63.2		
		Fixed carbon in coke	52.80
		Ashes	10.40
			100.00

Specimen from Coose bay. Analyzed by Professor A. Litton.

Specific gravity	1.369
Carbon in coke	61.00
Volatile gases	27.00
Moisture	9.00
Ashes	3.00
	100.00

All of which is respectfully submitted.

JOHN EVANS,
U. S. Geologist for Oregon and Washington Territories.

Hon. SAMUEL A. SMITH,
Commissioner General Land Office.

Estimates of the cost of printing Dr. John Evans's Report on the Geology of Oregon and Washington Territories, 1,500 copies, in quarto, made by the Superintendent of Printing for the House of Representatives.

For composition, 350 pages, small pica	$775 50	
For press-work	300 50	
For dry-pressing 80 reams, at 50 cents	40 00	
For inserting plates	87 20	
		$1,203 20
For 82½ reams, at $7 84		646 80
For binding		1,562 20
For 3 colored maps, engraving, paper, printing, at $400 each		1,200 00
For engraving 40 plates on steel, at $45 each		1,800 00

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For printing the same, at 65 cents per hundred	$397 50	
Paper for the same	48 00	
		$445 50
For 4 pages geological sections, 5 colored, at $4 per hundred	$244 80	
Paper for the same	38 40	
		283 20
Total cost of printing 1,500 copies		7,140 90
Total cost of printing 5,000 extra copies		13,886 80
Total cost of printing the usual number and 5,000 extra copies		21,027 70

(For printing 1,500 extra copies, $4,166 04, see detailed estimates.)

Cost of printing 1,000 *extra copies of Dr. John Evans's Geological Report.*

For press-work	$208 00	
For dry-pressing 52 reams	26 00	
For inserting plates	60 00	
		$294 00
For 54 reams of paper, at $7 84		423 36
For 3 maps, at $1 50 per hundred		450 00
For printing 40 steel plates, at 65 cents per hundred		260 00
For paper for maps and plates		256 00
For 5 tinted pages, at $2 60 per hundred	$130 00	
Paper for the same	30 00	
		160 00
For 4 colored pages, at $4 per hundred	$160 00	
Paper for the same	24 00	
		184 00
For binding		750 00
Cost for 1,000 extra copies		2,777 36
		5
Cost of 5,000 extra copies		13,886 80

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 178.

IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1860.—Ordered to be printed.

Mr. NICHOLSON submitted the following

REPORT.

The Committee on Revolutionary Claims have considered the memorial of Catharine Wilkie, daughter and only heir of Joseph Paine, praying relief on account of the military services of her father during the revolutionary war, and submit the following report:

They have examined with care the memorial of the petitioner, and have been unable to find any ground on which they can recommend the relief prayed for. They therefore report adversely to the claim, and ask to be discharged from its further consideration.

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IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1860.—Ordered to be printed.

Mr. TEN EYCK submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of Hetty G. Dorr, daughter of John D. Alvery, postmaster of the American army at headquarters, during the revolutionary war, praying "that the term officers, as used in the laws heretofore passed for the relief of the officers and soldiers of the revolution, their widows and orphans, be construed to embrace the said John Alvery, and that whatever pay or emoluments he or his widow may have failed to receive through a more strict construction of the said term, be paid, with interest, to their heirs or legal representatives, as if the rank of captain of infantry had been regularly assigned him, and his services had terminated with the war," beg leave to report:

That it is established by documents signed by Generals Washington and Knox that the said John D. Alvery served as postmaster in the American army for near five years; that he had been attentive to his duty, and acted in a decent and becoming manner, suitable to his station, and was entitled to the regard and esteem of all good men. That he resigned his position as such postmaster on the 28th of March, 1783, only a few days before the termination of the war.

That it further appears, by reference to the Journal of the Continental Congress, that the said John D. Alvery was allowed the same pay and rations as were allowed to a captain of infantry.

It is manifest, however, that the services of the said John D. Alvery were of a *civil* and not of a *military* character; and, although your committee are fully satisfied that they were faithfully performed and meritorious, yet they were not such as the government has been in the habit of rewarding with bounties and donations over and above the pay allowed at the time the service was rendered. The committee believe that this distinction has always been observed, and think it is inadvisable to establish a new rule, under which a new class of claims may be introduced into Congress, unlimited in numbers, unprecedented in character, so far as their allowance by Congress heretofore has been concerned, and which the treasury, however full, could not withstand.

Your committee are unanimously of opinion that the prayer of the petitioner ought not to be granted, and they therefore report adversely thereto, and ask to be discharged from the further consideration of the subject.

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IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1860—Ordered to be printed.

Mr. GRIMES made the following

REPORT.

[To accompany Bill S. 390.]

The Committee on Pensions, to whom was referred the petition of Hester Stoll, widow of Urban Stoll, praying for a pension, beg leave to report:

That it appears the husband of the petitioner served as a private in the United States army for nearly seventeen years; that he was wounded at the battle of Withlacochee, Florida, December 31, 1835, and for which wound he received a pension of six dollars per month, from the 4th July, 1845, to his death, 2d March, 1855.

It also appears that he died at Fort Myers, Florida, while in service.

His widow now prays a pension, on account of the death of her husband by his wound, and for his faithful services.

The petitioner also performed the duties of *hospital matron*, under the direction of Surgeon Saterlee, of the United States army, at the battles of Cerro Gordo, Churubusco, Molino del Rey, Chapultepec, and City of Mexico, in which capacity, he says, she added greatly to the comfort of the wounded and sick soldiers.

Your committee, believing that the petitioner is justly entitled to relief, beg leave to report the accompanying bill, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

April 10, 1860.—Ordered to be printed.

Mr. FITZPATRICK made the following

REPORT.

[To accompany Joint Resolution S. 28.)

The Committee on Indian Affairs, to whom was referred the claim of A. M. Fridley, late agent for the Winnebagoes, under resolution of the Senate of 1st ultimo, with instructions to inquire into the expediency and propriety of relieving him from the effects of a judgment obtained against him in the district court for the second district of the State of Minnesota, in consequence of his having, under orders from the Indian Bureau, disobeyed the injunction of said court, in regard to the payment of certain moneys belonging to said Winnebagoes, beg leave to report:

On the 30th September, 1850, money was appropriated to pay certain arrearages due the Winnebagoes.

The money was paid to Joseph Bryan, the regularly authorized attorney for the Indians.

A. M. Fridley was appointed United States agent for the Winnebagoes in December, 1850.

October 15, 1851, the Indians held a council to take into consideration their indebtedness to certain white men, traders. The Indians acknowledged an indebtedness, and requested Fridley to investigate the amount, and pay it out of the appropriation in Bryan's hands. The traders assented to the arrangement, and Fridley accepted the trust. The Indians gave him power of attorney, dated 17th October, 1851, to draw the money from Bryan.

October 19, 1851, Fridley inclosed the power of attorney to Bryan, and requested that the money should be forwarded to himself in drafts.

November 3, 1851, Bryan sent the drafts as requested to Fridley (amounting in the aggregate to $17,758) under cover from and franked by Luke Lea, Commissioner of Indian Affairs.

On the same day, (November 3,) under the same cover, Mr. Lea instructed Fridley to pay certain claims of P. Choteau, Jr. & Co. and others against the Indians, out of the money that day inclosed to him.

December 12, 1851, the traders (Lowry and others) who were parties with the Indians to the arrangement of the 15th and 17th of October,

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sued out an *injunction* against Fridley, restraining him from paying the money to any other parties than themselves. The court, in fact, seconded their demand that the arrangement should be carried out.

December 22, 1851, Fridley acknowledged receipt of Lea's letter of November 3, and informed him of the arrangement of the 15th and 17th October, and also that he (Fridley) had been restrained by injunction from paying the money to any other than the traders who were parties to the arrangement, and asked Lea to reconsider his instructions.

March 26, 1852, Lea answered, reiterating his instructions as follows:

"I have carefully considered this matter, and am satisfied that it is simply a case in which the only question is, which of two sets of claimants against the Indians, shall obtain satisfaction of their claims out of the money of the Indians, in your hands. I have no difficulty in deciding this question, notwithstanding the power of attorney and the injunction to which you refer. In no case whatever, can an agent make any private contract or arrangement with an Indian tribe by which he is to be absolved from his official obligation to obey the orders of this department. As to the injunction it is considered at best a mere nullity. The judge who granted it assumed jurisdiction of a matter which, by express provisions of law is committed to the discretion and management of the Commissioner of Indian Affairs. In regard to the merits of the two classes of claims, I am clearly of opinion that the older class is entitled to priority of claim. My order of 3d November, is, therefore renewed, and you will carry it promptly into effect."

He likewise proceeded to direct Fridley to pay any balance of the $17,758 which might remain in his hands after paying the claims of Choteau & Co., and others, on other claims "in such proportion as the Indians in open council shall direct."

This letter was addressed to Fridley in this city, whither he appears to have come on this business.

April 24, 1852, Fridley carried out the instructions by paying Choteau & Co., and the other claimants mentioned by Lea, and applying the balance of the $17,758 to other claims as directed by the Indians "in open council."

Suit was presented against Fridley in consequence of his disregard of the injunction. The suit was defended for him by Daniel H. Dusten, United States district attorney, and Wm. M. McCarty and A. R. Dodge, attorneys at law. The suit was protracted until 15th January, 1856, when judgment was rendered against Fridley for $22,792 33.

March 26, 1858, Fridley paid the judgment, with interest, according to the laws of Minnesota, amounting to $28,262 49.

The committee report a joint resolution for the relief of Fridley. As the money paid by him to Choteau & Co., and others, and for which judgment was subsequently obtained against him, was paid for the benefit of the Indians, the committee direct the Secretary of the Interior to retain the amount from certain annuities due the same Indians.

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IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1860.—Ordered to be printed.

Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 392.]

The Committee on Claims, to whom was referred the memorial of Joseph C. G. Kennedy, in relation to his compensation as superintending clerk on the census, report:

That this claim was carefully considered by the Senate Committee on Claims in the Thirty-fourth and Thirty-fifth Congresses, and has had the favorable action of the Senate in the passage of a bill similar to the one wherewith the committee accompany this report.

The facts in the case, which are detailed at some length in previous reports, are simply these: Mr. Kennedy, in accordance with the decision of the Secretary of the Interior, and the opinion of the Attorney General, was paid compensation at the rate of $3,000 per annum. He had performed the duty of Secretary of the Census Board, whereof the compensation fixed by law was $3,000, and that of superintending clerk, the compensation of which was $2,500.

The Comptroller of the Treasury passed the accounts of the disbursing agent wherein this allowance of $3,000 was recognized, but subsequently charged Mr. Kennedy on the books of the Treasury with $500 per annum, on the ground that he had received too large a compensation, and on that plea directed the Clerk of the House of Representatives to withhold from said Kennedy certain compensation due him as clerk of the Committee of Foreign Affairs of the House of Representatives, which the petitioner has not yet received. Congress subsequently, by the act of April 22, 1854, (10 Stat., 276) definitely established the salary of the superintending clerk at $3,000 per annum, which was received by the successor of Mr. Kennedy. This is the compensation asked for by the petitioner. In view of all the circumstances, the committee are of opinion that the sum ultimately fixed upon as a proper compensation for the duties of the office, namely, $3,000 a year, is a reasonable one, and that the memorialist is fairly and equitably entitled to that rate of compensation; and they report a bill accordingly.

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IN THE SENATE OF THE UNITED STATES.

APRIL 10, 1860.—Ordered to be printed.



Mr. SIMMONS made the following

REPORT.

[To accompany Bill S. 393.]

The Committee on Claims, to whom was referred the petition and papers of Jos. C. G. Kennedy, report:

That this claim is for indemnity for certain damages done to buildings while in the occupancy of the United States, under a lease from the claimant, and for arrears of rent alleged to be due under said lease.

This case was carefully considered by the Committee on Claims in the Thirty-fifth Congress, who reported a bill for the amount of damages which had been incurred by the property while in the use of the government. From the report then made the following facts appear:

By agreement between the proprietor and the Secretary of the Interior, the rent was fixed by John W. Maury, late mayor of Washington, and W. A. Bradley, Esq., late postmaster, at $1,750 per annum. The testimony of several witnesses is adduced to show the condition of the building when it was surrendered by the government. Mr. J. S. Hollingshead, for some time chief clerk of the Census Office, deposes that, "In all alterations and fixtures for the accommodation of the immense quantity of matter in the shape of returns, &c., the preservation of the property was not considered, but the walls were perforated with nails for shelving, &c.; the paper, of the most costly character, destroyed; and this once beautiful house (for the interior was very finely finished) was left, so far as the interior was concerned, a perfect wreck." He further says that he does not believe "that less than $2,000 would place the building in as good condition as when the government took possession of it."

John W. Forney, late clerk of the House of Representatives, deposes "that he became the proprietor of the buildings on 8th street, Washington, previously occupied by the Census Office; that the same were, when taken by him, in an untenantable and damaged condition, the walls being much cracked, the papering destroyed, and the woodwork much injured, the whole requiring thorough renovation; that to render the premises tenantable and place them in a condition such as he deemed necessary for the comfort of his family, he expended over $3,000."

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Mr. Edmondson, a practical builder, states that it could not have been restored to the condition it was in before the occupancy for less than $2,000; and Mr. Wood states it at $1,800, or more, and thinks a rent of two months should be allowed to cover the time of repairs.

The lease was one running from year to year, and the notice of intention to surrender the property was given nearly three and one half months previous to the day of surrendering the property, until which time it was occupied by the government. The contract between the government and the proprietor, as stated in the letter of the Hon. A. H. H. Stuart, Secretary of the Interior, to the Hon. H. A. Edmondson, stipulates, amongst other things, "that for any injury done to the house, beyond the ordinary wear and tear, compensation shall be made, by restoring it to the condition in which it was at the commencement of the lease."

From all the testimony in the case, the committee are of opinion that the sum of two thousand dollars ought to be allowed, and they report a bill accordingly.

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IN THE SENATE OF THE UNITED STATES.

APRIL 11, 1860.—Ordered to be printed.

Mr. THOMSON submitted the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Alpheus T. Palmer, praying for an increase of his pension, beg leave to report:

That it appears the petitioner was severely wounded at the battle of Churubusco, for which wound he was allowed a pension, under the general laws, of $17 per month, from the 27th August, 1848. This being the highest rate of pension granted by the general laws to officers of his grade, (first lieutenant,) he applied to Congress, and under a special act, approved 16th August, 1856, his pension was increased to $30 per month, which is the full pay of a lieutenant of infantry.

He now prays that his pension may be further increased, as it is "entirely inadequate to support himself and family."

Your committee are satisfied, from the evidence presented, that Lieutenant Palmer was a gallant officer, and performed his duty faithfully while in service, yet they do not think it proper to grant a further increase of his pension, and therefore recommend that the prayer of the petitioner be denied.

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IN THE SENATE OF THE UNITED STATES.

APRIL 11, 1860.—Ordered to be printed.

Mr. CRITTENDEN submitted the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Henry Brockholst Livingston, a lieutenant colonel of the continental army, praying for payment to them of the half pay, arrearages of pay, &c., to which he, as they allege, was entitled for his services in the war of the revolution, have had the same under consideration, and report:

That it appears the said Henry Brockholst Livingston was a lieutenant colonel in the army of the revolution; that he served and became entitled to half pay for life, &c., as represented in said petition. But this committee having referred the petition to the Treasury Department for information, have received, through the Secretary, several official letters from the Third Auditor of the treasury, from which it satisfactorily appears that the claims set forth in said petition were adjusted and fully paid to him in his life time, to wit: in the year 1786. The letters of the Third Auditor above alluded to, namely: one to the Secretary of the Treasury, one to the Hon. Abraham Bokee, and two to the Hon. George Briggs, are referred to and accompany this report, each marked A. The committee therefore recommend the adoption of the following resolution:

Resolved by the Senate, That the petition and claim of the heirs of Henry Brockholst Livingston be, and the same is hereby, rejected.

Exhibit A.

TREASURY DEPARTMENT,
Third Auditor's Office, February 3, 1834.

SIR: I have the honor of receiving your letter of 31st ultimo, in relation to Lieutenant Colonel Henry B. Livingston, of the revolutionary army. In reply, I have to state that there is no account on the revolutionary books on file in this office in the name of Colonel Henry *Beckman* Livingston, but there is an account of "Colonel Henry B. Livingston, of the second New York regiment," and also one in the name of "Lieutenant Colonel H. B. Livingston, aid-de-camp," but

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neither of these accounts show anything to be due to the officer; and if, as you suggest, there was but one Colonel Henry B. Livingston in service, it is certain there can be nothing due to him from the United States, as it appears that Lieutenant Colonel Henry B. Livingston had a settlement in the year 1786, when he received a funded debt certificate for the balance of his pay, and subsistence, and final settlement certificate for his commutation of five years' full pay in lieu of half pay for life. I have ascertained at the Bounty Land Office that a warrant has been issued for Lieutenant Colonel Henry B. Livingston's land.

With great respect,

PETER HAGNER,
Auditor.

Hon. ABRAHAM BOKEE,
House of Representatives.

A.

TREASURY DEPARTMENT,
Third Auditor's Office, March 7, 1860.

SIR: Your letter of blank date, making inquiry in relation to two officers of the army of the revolution, named Henry B. Livingston, was duly received, as also the petition and papers in support of the claim of the heirs of Henry Brockholst Livingston, as a lieutenant colonel of the revolution, for commutation. I have accordingly the honor to inform you, that upon examination it appears from the revolutionary records of this office, that there were two officers of that name. One is stated to have been colonel of the second New York regiment, and stands a debtor on the books for $5,349 10, notwithstanding his accounts are credited with nominal and real pay and subsistence from the 1st November, 1779, to the 31st December, 1781, and commutation for $3,600.

The other is Lieutenant Colonel H. B. Livington, aid-de-camp, whose accounts stand closed on the ledger. In the journal entry, however, the credit is to Lieutenant Colonel H. B. Livingston for five years' full pay, in lieu of half pay for life, $3,600, and the debt is to *Lieutenant Colonel Henry B. Livingston*, for his certificate for commutation numbered from 93,852 to 93,854, inclusive, $3,600.

Colonel Henry B. Livingston appears to have resigned, his resignation having been accepted under the resolve of the 13th of February, 1779. He therefore was not, under any circumstances, entitled to commutation, and the postings to his account of the said pay and commutation, on the ledger, is *evidently an error*.

By the Journal of the old Congress, under date of the 15th of October, 1779, it appears a letter of this date from Mr. Jay was read, soliciting leave of absence for Lieutenant Colonel Livingston, to accompany him to Spain. A motion was made by Mr. Matthews, seconded by Mr. Harnett, that Lieutenant Colonel H. B. Livingston have leave of absence for twelve months, on which the yeas and nays were required, and decided in the affirmative.

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From the facts ascertained from the records of the State Department, which appear in the copies from the records thereof accompanying the petition and papers, it appears that Lieutenant Colonel Henry Brockholst Livingston returned from the same on the 1st of January, 1782, under the resolve of Congress of 31st December, 1781, and was not attached to the line of any particular State, and that he preferred his claim for compensation and commutation as early as 1784, and pursued it until May 1785. By the resolution of the 8th of March, 1785, such of the officers as retired under the resolution of the 31st December, 1781, were equally entitled to the half pay or commutation with those officers who retired under the resolutions of the 3d and 21st October, 1780; so that no impediment at the time of his last application existed to an allowance of his claim.

From the facts in the case it is clear to my mind that the pay, &c., from the 1st November, 1779, (long after the resignation of Colonel Livingston, and which embraces the whole period of Lieutenant Colonel Livingston's leave of absence, and more than a year thereafter,) to the 1st January, 1782, the date of his derangement, which appears on the Journal under date of January and March, 1786, should, together with the half pay or commutation, have been posted to the account of Lieutenant Colonel Henry Brockholst Livingston, and that he has been fully settled with, both for his pay and commutation of five years' full pay, in lieu of half pay for life.

The petition and papers are herewith returned.

With great respect, your obedient servant,

R. J. ATKINSON,
Auditor.

Hon. GEORGE BRIGGS,
Chairman Committee of Revolutionary Claims,
House of Representatives.

A.

TREASURY DEPARTMENT,
Third Auditor's Office, March 13, 1860.

SIR: I have the honor to acknowledge the receipt of your note of the 10th instant, requesting me to furnish you with an abstract of the account of Lieutenant Colonel Henry Brockholst Livingston, as it now stands on the ledger of the Treasury Department, for the use of the Committee on Revolutionary Claims. In compliance with your request, I herewith inclose a copy of the account of Lieutenant Colonel H. B. Livingston, aid-de-camp, (there being no account in the name of Lieutenant Colonel Henry Brockholst Livingston on the books) who is no doubt the officer, the claim of whose heirs is now before your committee, and who has been fully settled with, as stated in my letter to you of the 8th instant, for his pay and commutation.

I also inclose you a copy of the account of Colonel Henry B. Livingston, second New York regiment, who appears to have resigned in January, 1779, and who, in consequence thereof, was not entitled to commutation. I also inclose to you a copy of a letter from this office,

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under date of 3d February, 1834, to the Hon. Abraham Bokee, in regard to the case of Lieutenant Colonel Henry B. Livingston, which, together with the copies of the account, affords all the information the records of this office show, in relation to the said Livingston.

With great respect, your obedient servant,

R. J. ATKINSON,
Auditor.

Hon. GEORGE BRIGGS,
Chairman Committee on Revolutionary Claims,
House of Representatives.

A.

TREASURY DEPARTMENT,
Third Auditor's Office, March 14, 1860.

SIR: I have the honor to return you herewith the letter of the Hon. John J. Crittenden, chairman of the Committee on Revolutionary Claims, United States Senate, inclosing the printed petition of the heirs of Henry Brockholst Livingston, as a lieutenant colonel during the war of the revolution, and requesting to be furnished with such information as the records afford in support of, or against, the claim of the heirs of Henry Brockholst Livingston, which you referred to me this morning for a report, and I have to inform you that the same claim has been the subject of very much correspondence with this office and the Hon. George Briggs, chairman of the Committee on Revolutionary Claims of the House of Representatives, which, as the committee had not received my answer to its last letter, *received yesterday,* I presume the claim has not, as yet, been disposed of by that committee. I herewith inclose to you copies of the correspondence, which furnishes all the information the revolutionary records of this office afford in relation to the subject.

With great respect, your obedient servant,

R. J. ATKINSON,
Auditor.

Hon. HOWELL COBB,
Secretary of the Treasury.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 186.

IN THE SENATE OF THE UNITED STATES.

APRIL 11, 1860—Ordered to be printed.

Mr. POWELL made the following

REPORT.

[To accompany Bill S. 395.]

The Committee on Pensions, to whom was referred the petition of Lemuel Worster, praying for an invalid pension, beg leave to report:

That the petition was first presented at the second session of the Thirty-third Congress, upon which a favorable report was made; also at the first session, Thirty-fourth Congress; first session, Thirty-fifth Congress; and bills introduced at the first session, Thirty-fifth Congress; his claim was passed by the Senate and reported to the House of Representatives.

At the present session the petition was again referred to the Committee on Pensions, and on the 6th March, 1860, was reported adversely.

March 16, recommitted, since which date the Third Auditor of the Treasury has furnished evidence from the rolls, showing that three of the witnesses in the case were officers in a company of detached militia in which petitioner served as a waiter.

Upon a careful examination of the evidence last presented, your committee are of the opinion that the petitioner is entitled to relief, and therefore incorporate the report of the first session of the Thirty-fifth Congress with that of this committee, and agree to the accompanying bill.

IN SENATE OF UNITED STATES, *April* 27, 1858.

The Committee on Pensions, to whom was referred the petition of Lemuel Worster, praying for a pension on account of a disability incurred while employed as a waiter to an officer in the service of the United States during the last war with Great Britain, having had the same under consideration, do now report:

That said petition has previously been before Congress, and has formerly received the favorable action of both Houses, but failed by casualty to become a law. At the last Congress the Committee on

Pensions made the following report, which your committee adopt, and report a bill for his relief:

"That the petitioner, then but twelve years of age, served in the war of 1812 as a servant to an officer of the militia, under the following circumstances:

"His father, Captain Alexander Worster, now deceased, was in command of a company of militia, and in September, 1814, received orders to march to Kittery Point, in the State of Maine, and join himself to the troops there rendezvousing for the defense of the coast against British invasion. Ten days after effecting a junction of the forces detailed for that service, an order was received from the War Department to organize the companies of one hundred men each. Under this order Captain Worster's company and the companies commanded by Captains Thompson and Ayers were consolidated into two companies, under command of Thompson and Ayers, and Captain Worster was appointed first lieutenant of Captain Thompson's company, and commissioned as such. Under the regulations issued, each commissioned officer of said companies was entitled to, and each appointed, a servant or waiter. They were usually selected from among the enrolled men, and detailed for this duty, under pay and rations; but in this instance the officers exercised their discretion, and selected their attendants outside of the ranks. In this selection no regard was paid to age, provided the person was capable of performing the duty; and Lieutenant Worster appointed his son Lemuel, then twelve years of age, and, in the language of the affidavit of Captain Thompson, accompanying the papers, 'a smart, active lad, who served as such, and was constantly in the line of his duty, until he was taken sick of camp or spotted fever.' This disease prevailed to a fearful extent in the camp, and petitioner was violently attacked by it, and continued in a critical situation until long after the troops were discharged—his father remaining at Kittery Point in charge of him a long time after that event. After a slow and painful recovery, it was found that the disease had made sad havoc of the energies and faculties of the petitioner.

"Not only was his health completely broken down, but he had lost the sight of one eye entirely, the faculty of speech was gone, and he was perfectly deaf—all hopes of his usefulness or happiness in life utterly destroyed. In this situation he has lingered to the age of fifty-two years, always a charge upon his friends. Since the death of his father his situation is one of entire dependence upon charity, and the kindness of those indifferent to his comfort and necessities. He prays now that Congress, as an act of charity and justice, would grant him a pension for the remainder of his life. There is, of course, no law providing for the case; but had Lieutenant Worster appointed his servant from the ranks, as it was his privilege to do, instead of requiring the duties of his son, that attendant, if thus disabled, would be provided for in the general statutes; and had the son been an enlisted soldier, there would have been no question in the case. In view of the fact that, although a boy, he was appointed to, entered upon, and discharged the duties that would otherwise have been required of an enrolled soldier, the committee think the case is brought within the

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intent of the law, and it being a case appealing strongly to the charity of Congress, aside from the question of right, they recommend an act for his relief.

"The evidence accompanying the petition is ample, well authenticated, and most conclusive of the truth of the above facts. A bill is herewith reported."

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 187.

IN THE SENATE OF THE UNITED STATES.

April 11, 1860.—Ordered to be printed.

Mr. POWELL made the following

REPORT.

[To accompany Bill S. 396.]

The Committee on Pensions, to whom was referred the petition of Lockley Simpson, praying for an increase of pension, beg leave to report:

That it appears the petitioner was a private in the seventh regiment, United States Infantry, and that on the 22d December, 1813, he accidently received a wound by the shot of a gun, which deprived him of two of the fingers of his right hand, and that he was discharged on "certificate for pension, as being one-fourth disabled." He was allowed a pension at the rate of $2 per month from the date of his disability. He now prays that he may be allowed a pension for full disability.

It appears from the papers that he lost the first two fingers of the right hand, and that, being a tailor by trade, he is unable on this account to follow that occupation.

Two physicians, certified to be respectable in their profession by the chief justice of Fayette county, Texas, gave their certificate October 1, 1856, saying that, in their opinion, he was three-fourths disabled.

Your committee, believing from the evidence that he is two-thirds disabled, report a bill for his relief.

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IN THE SENATE OF THE UNITED STATES.

April 11, 1860.—Ordered to be printed.

Mr. Thomson made the following

REPORT

[To accompany bill S. 398.]

The Committee on Naval Affairs, to whom was referred the petition of Samuel R. Franklin, a lieutenant in the navy, have had the same under consideration, and report:

That the petitioner was a lieutenant, performing duty as such on board the sloop-of-war Falmouth, attached to the Brazil squadron; that on the 16th of May, 1858, the purser of that ship having been detached and ordered to the flag-ship by the commander-in-chief, he was appointed acting purser to fill the vacancy thus occasioned; and that on that day he entered upon the discharge of the duties of purser of the Falmouth, and continued to perform them until the end of the cruise and the adjustment of the accounts of that vessel at the Treasury Department.

This case having been submitted to the Navy Department, the following facts were obtained:

Navy Department, *February* 16, 1860.

Sir: I have the honor to acknowledge the receipt of your letter of the 2d instant, inclosing the petition of Lieutenant Samuel R. Franklin.

The statement made by Lieutenant Franklin as to his having performed the duty of acting purser for the period mentioned is correct. The settlement of his account shows him indebted to the government to the amount of $660 47, $598 63 of which is for difference of pay between lieutenant and acting purser. This amount the department has allowed him to retain until he should have an opportunity of presenting his claim to Congress. The balance consists of suspensions and disallowances. During the time that he performed the duties of purser, he was relieved from duty as lieutenant.

The petition is herewith returned.

I am, very respectfully, your obedient servant,

ISAAC TOUCEY.

Hon. S. R. Mallory,
Chairman Committee on Naval Affairs, U. S. Senate.

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The claim of the petitioner is for the difference between the pay he received and that which a purser would have received had there been one on board, amounting to $598 63, as will be seen by reference to the letter of the honorable Secretary of the Navy herein inserted.

These cases, not of frequent occurrence, have been favorably regarded by Congress, and the difference of pay is esteemed by your committee as only a proper reward to the officer who faithfully discharges, without loss or injury to the government, the responsible duties of a disbursing officer, not properly, but at times necessarily, devolving upon the line officers of the navy, from the insufficiency of officers of the appropriate class.

Your committee therefore report the accompanying bill, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

APRIL 11, 1860.—Ordered to be printed.

Mr. THOMSON made the following

REPORT.

[To accompany Bill S. 399.]

The Committee on Naval Affairs, to whom was referred the petition of Thomas G. Corbin, a lieutenant in the navy, having had the same under consideration, beg leave to report:

That the petitioner was a passed midshipman on board the United States frigate Columbia, the flag-ship of the Brazil squadron; and that on the 24th day of August, 1846, he was appointed acting flag-lieutenant to fill one of two vacancies that occurred in the grade of lieutenant.

The act of 10th August, 1846, gave to passed midshipmen performing the duties of master the pay of the higher grade; but the existence of the act was at the time unknown in the squadron, as will appear from the following certificate of the commander-in-chief:

NEW ORLEANS, *December* 31, 1847.

I hereby certify that when Passed Midshipman Thomas G. Corbin was appointed an acting lieutenant, to supply the vacancy by Lieutenant Drayton being sent home sick from the frigate Columbia, the usual formality of previously appointing him an acting master was dispensed with, inasmuch as at that time such appointment conferred no increase of compensation.

L. ROUSSEAU,
United States Navy.

Under the act of 1846, an officer junior to the petitioner, who held the appointment of acting master by the same authority, received the compensation of the higher grade, while the petitioner was continued upon the pay of a passed midshipman.

By the sixth section of the naval appropriation act of 3d March, 1847, it was provided:

"That when any master in the navy, or passed midshipman, holding an acting appointment as master from the Secretary of the Navy, has performed, or shall hereafter perform, the duty of lieutenant, under an order of the commander of the vessel to which he was or shall be at

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the time attached, to supply a deficiency in the established complement of lieutenants of said vessel, whether belonging to a squadron or on separate service, which order shall have been subsequently approved by the Secretary of the Navy, shall be allowed the pay of a master for the period or periods during which he shall have performed such duty."

The petitioner asks the difference of pay between that of passed midshipman ($750 a year) and that of master, ($1,000 a year,) which he would have received under the above acts, by being first appointed master, had their existence been known to the commander-in-chief at the time of his appointment as acting lieutenant. The time of service, and the amount involved, are stated in the following letter from the Navy Department:

NAVY DEPARTMENT, *March* 16, 1860.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th instant, inclosing a petition of Lieutenant Thomas G. Corbin, and to inform you that Lieutenant Corbin served as flag-lieutenant, on board the Columbia, from August 24, 1846, to October 25, 1847; and that the difference between the pay of a passed midshipman and that of a master, for that period, amounts to $293 15. The petition is herewith returned.

I am, respectfully, your obedient servant,

ISAAC TOUCEY.

Hon. S. R. MALLORY,
Chairman Com. on Naval Affairs, U. S. Senate.

The act of July 27, 1854, gave to passed midshipmen Welsh and Wells the pay of lieutenants for the time they served as acting lieutenants. The petitioner asks that he may be allowed the compensation of the intermediate rank of master only, which your committee are unanimously of the opinion should be paid him. They, therefore, submit the accompanying bill with the recommendation that it do pass.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 190.

IN THE SENATE OF THE UNITED STATES.

APRIL 11, 1860.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 400.]

The Committee on Foreign Relations, to whom was referred the petition of E. George Squier, praying to be allowed an outfit as chargé d'affaires to each of the governments of Gautemala, San Salvador, Nicaragua, Costa Rica, and Honduras, and also a balance of salary which he claims to be due, have had the same under consideration, and report:

That having reviewed report No. 280, made at the second session of the Thirty-fifth Congress by this committee, upon the same petition, they have determined to adopt the same, and herewith submit a bill in accordance with its recommendations.

IN THE SENATE OF THE UNITED STATES, *February* 18, 1859.

The Committee on Foreign Relations, to whom was referred the memorial of E. George Squier, late chargé d'affaires of the United States to the republic of Guatemala, praying additional compensation for extraordinary services performed by him during his mission, have had the same under consideration, and now report:

The memorial sets forth that, on the 2d of April, 1849, the memorialist was commissioned as chargé d'affaires of the United States to the republic of Guatemala, and also formally accredited to the republics of San Salvador, Nicaragua, Costa Rica, and Honduras, by separate letters to the ministers for foreign affairs of those governments. That the President also conferred upon him, in due form, full and separate powers to negotiate treaties with the governments of Guatemala, San Salvador, Nicaragua, Honduras, and Costa Rica. That with the first four of these republics he concluded important treaties, two of which were ratified by the Senate. That in carrying on correspondence and conducting negotiations with five different governments at the same time, he was compelled to employ two secretaries, for which no compensation was allowed him. That in collecting information with regard to the practicability of a ship canal between the

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two oceans, through Nicaragua, in accordance with his instructions, he necessarily traversed the State in every direction, and spent considerable sums of money in procuring proper instruments, and many weeks of time. That in June, 1850, he returned to the United States, on leave of absence from the Secretary of State, and while here a new administration came into power, and he was superseded on the 13th of September following. That, upon the settlement of his accounts at the department, he was allowed a salary only to the time of his leaving Central America, together with the usual infit of a chargé d' affaires.

In consideration of these facts, the memorialist asks that he may be allowed a sum equal to an outfit of a chargé d'affaires to each of the republics to which he was commissioned, and with which he opened relations; and also for the salary accruing between the 28th June, the date of his leave, and the 13th of September, the date of his recall; and, in support of his claim, refers to allowances heretofore made in similar cases, viz: to Mr. Murray, in 1800; Mr. Madison, in 1804; Mr. Pinckney, in 1806; Messrs. Schenck and Pendleton, in 1852; and Mr. Kerr, in 1854.

It further appears that the Secretary of State, in a letter addressed to the Hon. D. E. Sickles, of the Committee on Foreign Affairs of the House of Representatives, dated April 12, 1858, in answer to a call for information on the subject, fully sustains the statements of the memorial in regard to the "value and importance of the services rendered by the memorialist at a most interesting juncture of our relations in that quarter, and especially in connection with the negotiations which were going on here at the same time with Great Britain;" and, after speaking of the energy and zeal which he had exhibited in the public service as being such as justly to entitle the memorialist to the leave of absence asked for, and granted by the department, the Secretary adds: "The precedents referred to in the memorial of Mr. Squier are pertinent to his application. The 'letters of credence' and 'full powers,' bestowed upon the functionaries named, were documents of precisely the same character as those hereinbefore mentioned as furnished to Mr. Squier."

In the various precedents cited by the memorialist, and referred to by the Secretary, there may have been peculiar circumstances which, in the judgment of Congress, justified their allowance. But, in the opinion of the committee, as a general rule, the purpose and object for which outfits are allowed to our diplomatic representatives is mainly to furnish the means for fitting up necessary establishments, suited to their grade, at the courts to which they are accredited, without having to draw upon either their salaries or private resources for that purpose. In this case it does not appear that any such establishments were necessarily fitted up. On the contrary, the very brief period (less than a year) during which the memorialist remained in Central America renders it more than probable that none such were required, except, perhaps, at the court where he chiefly resided whilst in that country.

In carrying out this view, the committee believe that a reasonable allowance should be made to cover the expenses of the memorialist in going from one court to another, together with clerk hire and other

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charges incident to the negotiation of the several treaties concluded by him with the republics of Central America. And in the absence of any certain data from which to ascertain the amount of such expenses, the committee regard the allowance of one additional outfit of four thousand five hundred dollars as amply sufficient for that purpose, and recommend it accordingly.

With reference to the claim for nine hundred and thirty-seven dollars for the balance of salary, alleged to be due for the interval between the date of his departure from Central America, (28th June, 1850,) to the time of his recall, (13th September, 1850,) the committee are of opinion that the decision of this question rested properly with the department. If justified by law and usage in such cases, it would doubtless have been allowed in the settlement of his accounts, unless excluded by special considerations. Unadvised of the peculiar circumstances which may have caused the rejection of this item by the proper accounting officers in the settlement heretofore made, the committee are not disposed to disturb that settlement. They, therefore, report a bill in accordance with these views, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 191.

IN THE SENATE OF THE UNITED STATES.

APRIL 11, 1860.—Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 401.]

The Committee on Foreign Relations, to whom was referred the petition of James G. Clarke, praying compensation for his services as chargé d'affaires of the United States at Belgium, have had the same under consideration, and report:

The petitioner seems to have acted as private secretary to the minister resident of the United States at Brussels, and, in that capacity, to have taken charge of the legation during the absence of the minister, from September 24, 1856, to the 11th June, 1857, at which time the minister resident resigned.

The petitioner continued to discharge the aforesaid functions until the 27th September, 1858, at which date a minister resident of the United States arrived at Brussels, and his services terminated.

As the petitioner does not seem to have been appointed or acknowledged by the government of the United States in any diplomatic capacity, there appears no legal obligation to make him compensation, yet in consideration that, from the time that the American minister resigned, on the 11th June, 1857, to the 27th September, 1858, at which date his successor arrived at Brussels, the petitioner appears to have performed the functions referred to faithfully and creditably, the committee deem it proper to award him compensation at the rate per annum of the salary of a secretary of legation at Belgium, in full compensation and indemnity for his services.

They therefore report herewith a bill in accordance with these opinions.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 192.

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1860.—Ordered to be printed.

Mr. HEMPHILL submitted the following

REPORT.

[To accompany Bill H. R. 233.]

The Committee on Claims, to whom were referred the memorial of the legal representatives of C. G. Treichel and others, deceased, late clerks in the Philadelphia custom-house, praying arrears of compensation due said clerks; and also House bill No. 233, "for the relief of the legal representatives of five deceased clerks in the Philadelphia custom-house," have examined the same, and report:

This claim is presented by the legal representatives of five persons who were clerks in the Philadelphia custom-house, between the years 1821 and 1832. The period of service of each one respectively is given in a statement made by the deputy collector at Philadelphia in 1853, taken from the records of the custom-house. It is a claim for arrears of compensation due said clerks, and appears to have arisen in this manner:

By the act of 2d March, 1799, "to establish the compensation of the officers employed in the collection of the duties, &c.," the collectors at the larger ports were paid in the shape of fees, which were fixed and regulated by the act. They were required to pay no portion of these fees into the treasury, but were allowed to retain all the balance remaining after paying certain expenses incident to the office. The employment and pay of clerks was left entirely to the discretion of the collectors, the only condition being, that they should "keep accurate accounts of all fees and official emoluments received by them; also, of all expenditures particularizing their expenditures for rent, fuel, stationery, and clerk hire," which, verified by oath or affirmation, were to be sent to the Comptroller of the Treasury, who was required to lay an abstract of them before Congress annually. On the 30th April, 1802, an act was passed, to take effect on the 30th June, 1802, amending the act of 1799, the third section of which, is as follows: "That from and after the said 30th day of June, whenever the annual emoluments of any collector of the customs, after deducting therefrom the expenditures incident to his office, shall amount to more than five thousand dollars, or those of a naval officer, after like deduction, to more than three thousand five hundred dollars, or those of a surveyor, after a like deduction to more than three thousand dollars, the surplus shall be accounted for; and

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be paid by them, respectively, to the treasury of the United States: *Provided always*, That nothing in this act contained shall be construed to extend to fines, forfeitures, and penalties, under the revenue laws of the United States." In May, 1822, another act was passed regulating the compensation of the officers of the customs. Section 9 requires that whenever the emoluments of any collector of the customs of either of certain ports, among which is Philadelphia, shall exceed four thousand dollars, "after deducting the necessary expenses incident to his office in the same year, the excess shall, in every such case, be paid into the treasury for the use of the United States." Section 13 provides that every collector shall, together with his accounts of the expenses incident to his office, render a list of the clerks employed by him, stating the rate of compensation allowed to each, and the duties they severally perform. Section 15 provides that the Secretary of the Treasury may, from time to time, limit and fix the number and compensations of the clerks to be employed by any collector. This was the first time the appointment and pay of clerks was taken out of the hands of the collectors, but, as will be seen by a letter from the Comptroller of the Treasury, which will be incorporated in this report, the power thus given to the Secretary of the Treasury had never been exercised up to the year 1846; so that, practically, the employment and compensation of the clerks in the custom-houses still continued under the direction of the collectors.

It appears from the papers that, to secure for himself the full amount of the maximum allowed by law, the collector at Philadelphia employed clerks at small salaries with the understanding that, if at the end of the year, after retaining for himself the maximum allowed by law, there still remained an excess of emoluments, that their salaries should be increased out of said emoluments. This practice prevailed prior to 1822, and has been continued most of the time since, sanctioned by the Secretary of the Treasury. From its discontinuance during the years from 1821 to 1832, under peculiar circumstances, the claim now under consideration has arisen. In 1822, from ill-health of the collector, the business of the Philadelphia custom-house passed into the hands of the deputy collector. It is stated by the petitioners that the said deputy exercised despotic power over the clerks, and instead of paying them out of the surplus of emoluments, at the end of the year, anything additional to their minimum salaries, sent all of the surplus of emoluments to the treasury of the United States. This practice the deputy collector continued up to the year 1832, and during the interval the sum of $48,768 58 of surplus emoluments was paid into the treasury, as appears from a certified statement of the Register of the Treasury. That the clerks did not receive during that period the usual amount they had received previous to 1822, will appear from the following table certified by the register:

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Clerks' pay from 1816 *to* 1831.

Year.	Clerk hire paid.	Balance after paying expenses.	Collector's compensation.	Surplus.
1816	$14,368 03	$19,165 94	$5,000 00	$14,165 94
1817	15,052 26	12,496 66	5,000 00	7,496 66
1818	15,148 20	7,073 44	5,000 00	2,073 44
1819	15,779 14	5,416 33	5,000 00	416 33
1820	11,692 00	4,993 41	4,993 41	.....
1821	11,017 25	4,281 01	4,281 01	.....
1822	10,573 67	5,027 12	3,970 04	1,057 08
1823	10,725 00	11,669 76	4,400 00	7,269 76
1824	11,330 51	10,353 45	4,400 00	5,953 45
1825	10,849 00	12,491 07	4,400 00	8,091 07
1826	11,085 00	14,502 18	4,400 00	10,102 18
1827	10,620 00	6,496 22	4,374 45	2,121 77
1828	10,620 00	12,031 59	4,400 00	7,631 59
1829	10,620 55	3,985 13	3,459 20	525 93
1830	11,236 30	7,462 47	4,400 00	3,062 47
1831	11,370 26	7,353 28	4,400 00	2,953 28

It will be observed, that from 1816 to 1819 the collector received his maximum compensation, and the clerks' hire reached from $14,368 03 to $15,779 14, and still a surplus remained; that during the years 1820 and 1821 the collector did not get his maximum, and the clerks' hire fell to $11,692 00 and $11,017 25, and no surplus remained; the emoluments being small during those years. By the act of May 7, 1822, the collector's maximum compensation was fixed at $4,400, and it will be observed that from 1822 to 1831 inclusive, that although the collectors received their maximum pay, except in a few instances, from a change of collectors, and a surplus in the aggregate of $48,768 58 remained, still the clerks' hire reached only from $10,573 67 to $11,370 26, about the same as it was during the years 1820 and 1821, when there was no surplus of emoluments.

The five clerks, your petitioners, claim now the sum of $9,895 17 to complete their maximum pay during those years from 1822 to 1831 inclusive, when there was a sufficient surplus of emoluments to allow it, but which surplus was sent to the Treasury of the United States, and a portion of it still remains there. The deputy collector who deprived them of their maximum pay, afterwards became collector, and outlived all of the five clerks. There were, however, eight other clerks in the Philadelphia custom-house during the same period as the five deceased clerks who survived after the death of the collector, and who, upon application to his successor, were paid the amount necessary to complete their maximum of compensation during the years from 1822 to 1831 inclusive. This act of his successor was approved by the Secretary of the Treasury, as will appear from the following letter:

TREASURY DEPARTMENT,
Comptroller's Office, March 7, 1846.

SIR: I have duly considered the inclosed abstract of payments made by Calvin Blythe, collector of the customs at Philadelphia, to clerks

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in the custom-house of that port, amounting to the aggregate sum of $41,058 90, for services rendered by them from 1822 to the year 1832, at *maximum rates, stipulated to be paid when the emolument accounts of said collector showed a surplus wherewith to pay the same, and so actually allowed and paid in years prior to* 1822, and which *maximum* rates do not appear to have been modified by the act of Congress approved May 7, 1822, nor by any decision of the Secretary of the Treasury, who alone could subsequently have increased or reduced them; but, on the contrary, seems to have been afterwards recognized and sanctioned by that officer when, in the year 1839, the sum of $15,000, under the act approved March 3, 1839, and in the year 1841, the sum of $10,110, under the act approved March 3, 1841, were distributed amongst and paid to clerks in said custom-house to complete said *maximum* rates of compensation for services performed from the year 1832 to the year 1837; and which rates have since been continuously, and are now allowed in conformity with law; and notwithstanding I think said collector should not have assumed to pay compensation earned so long before the beginning of his term of office, and when the propriety of paying it was under the consideration of this department, still, as I believe said compensation was earned under, and claimed in conformity with a well-known and valid agreement; and that if said payment shall not be credited in the adjustment about to be made here of said collector's final account, in which he has charged this sum, and suit shall be brought against him and his sureties to recover the same, that agreement would be proved to the satisfaction of the court and jury, and the sum paid thereunder be consequently allowed by the verdict; therefore, I do hereby respectfully submit and advise, that it is expedient to allow and credit said collector in the said adjustment with the sum of said payments.

With great respect, your obedient servant,

JAS. W. McCULLOH.

Hon. ROBERT J. WALKER,
Secretary of the Treasury.

[Indorsement.]

The within report approved.

R. J. WALKER,
Secretary of the Treasury.

MARCH 7, 1846.

After this decision of the Secretary of the Treasury, and during the same year, (1846,) the attorney of the representatives of the five deceased clerks presented their claims at the treasury, but connected with them the claims of seven other clerks, which did not stand on the same footing. This, together with the fact that the aggregate of both sets of claims exceeded the balance of the surplus of emoluments in the treasury, caused embarrassment in adjusting the account, and the case was suspended. In the meantime, the attorney died, and the claim was not pressed until 1854, when the memorialists again presented their claims to the commissioner of customs, with a communi-

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cation from the seven clerks relinquishing all claim, on their part, against the United States, for arrears of compensation for services rendered. After laying some time in his office, the papers were returned to the petitioners with the remark that they could apply directly to the Secretary. On the 7th October, 1854, therefore, the papers were addressed to the Secretary of the Treasury, who was then absent from the city: and shortly after, the Assistant Secretary sent the packages to the commissioner of customs, with the following indorsement:

"I think these claims stand upon a different footing from those provided for by law, and that the fact of a provision for others is an exclusion of these. A parol agreement, as alleged in those cases, is entitled to no consideration in the face of receipts given at the time, and after the lapse of thirty years.

"P. G. W.

"*October* 23, 1854."

The receipts alluded to in the above indorsement have been asked for, but your committee has been informed at the treasury that they were destroyed when the old treasury building was burned.

The claim was afterwards presented to the present Secretary of the Treasury, and in a reply, dated the 16th December, 1857, he says, "I have to state that as this claim was presented during the official term of my predecessor, and I find the following decision indorsed on the papers," (which has already been quoted,) "and no new facts being presented, I do not feel authorized, under the rule laid down in such cases, to reopen the claims." He appears, therefore, never to have examined this claim upon its merits.

The following statement indicates the time of service and the pay claimed by the petitioners:

Statement of arrears of compensation due to the following clerks who were in the custom-house at the district and port of Philadelphia, in the year 1822, *and between that and the year* 1832. *The said compensation having been due and payable to them out of the surplus emoluments of the collector, but withheld by the then deputy collector, under his misapprehension of the act of May* 7, 1822, *and erroneously paid into the treasury.*

	From—	To—	Rate paid.	Rate claimed.	Difference.	Amount due.
Estate of G. C. Treichel..	Jan. 1,1822	Feb. 28,1826	$1,200	$1,500	$300	$1,850 00
	Mar.1,1826	Oct. 31,1826	600	.....	900	
Estate of Eli Valette.....	Jan. 1,1822	Feb. 1,1824	1,200	1,500	300	623 90
Estate of J. B. Shull.....	.....	Dec.11,1824	660	1,200	540	1,591 27
Estate of David Gibson...	.....	Jan. 31,1825	660	1,200	540	4,985 00
	Feb. 1,1825	Dec. 31,1831	720	.....	480	
Estate of Wm. Bryant...	Jan. 1,1822	Mar.31,1825	540	800	260	845 00
						9,895 17

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CUSTOM-HOUSE, PHILADELPHIA,
Collector's Office, April 6, 1853.

I do hereby certify that, on examination of the records of this office, it appears that the following named clerks in the collector's office received the arrears of compensation due them on report of the First Comptroller, March 7, 1846, and approved by the Secretary of the Treasury, to wit: Thomas F. Valette, Richard L. Howell, John C. Pechin, Robert Steele, Abraham Martin, Charles Treichel, Thomas Latimer, and Thomas Ashmead; and that the five clerks named in the foregoing list, now deceased, have not as yet received the arrears of compensation therein stated, and now claimed by their legal representatives, out of the surplus fees of the collector, erroneously paid into the treasury.

CHARLES TREICHEL,
Deputy Collector.

Your committee see no ground of distinction between this claim and that of the eight clerks which has been paid, and acknowledged to be just. They therefore report back House bill 233 without amendment, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1860—Ordered to be printed.

Mr. BIGLER made the following

REPORT.

[To accompany Bill S. 403.]

The Committee on Patents, to whom were referred the memorial and petition of Thatcher Perkins and William McMahon, make the following report:

It appears from the testimony in this case that letters patent were granted on the 10th day of April, 1843, to Perkins & McMahon, for improvements in the construction of cast-iron wheels for locomotive steam engines, cars, trucks, &c., which patent expired on the 10th day of April, A. D. 1857.

From the testimony before your committee, it appears that the said memorialists have complied with all the regulations of the general law on the subject of the extension of patents by the Commissioner of Patents, but for some reason not fully developed in the case, the extension asked for by the memorialists was not granted.

Your committee are fully satisfied, from an examination of all the facts in this case, that the invention of Messrs. Perkins & McMahon is of great value and importance to the country, inasmuch as the wheels constructed on the plan of the patent of the memorialists combine the advantages of durability and utility, and consequent safety to life and property on railroads.

The memorialists have adduced proof of the value, utility, and skill, of their invention from men eminent for their scientific knowledge and intimate acquaintance with all the known modes of constructing wheels for locomotive engines and other vehicles, used on the railroads of our country, which establishes the superiority of the invention of Perkins & McMahon over all others now in use.

On this point, your committee are satisfied that the testimony is abundant and conclusive, and fully establishes the fact that the invention of Messrs. Perkins & McMahon is both novel, ingenious, and of great utility. The evidence also shows that the memorialists have encountered no inconsiderable degree of difficulties and opposition from foreign interests in the introduction of their invention into use; and that these hindrances have occasioned a large amount of expense, without a corresponding remuneration.

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The moderate price at which they sold the right to use their invention has not enabled them to reimburse themselves for their outlay, time, trouble, and skill, in getting up the invention and introducing it into general use; and hence your committee are of the opinion that an extension should have been granted them by the Commissioner of Patents.

In this connection your committee would state that the examination of the case of Messrs. Perkins & McMahon, was made, not by the then Commissioner of Patents, but by the Chief Clerk, and from a letter from the Commissioner of Patents, addressed to Messrs. Perkins & McMahon, under date of June 2, 1858, he says, *inter alia:*

"Your letter of the 21st ultimo has been received, together with certified copies of all the papers necessary to enable me fully to understand the case of your application for the extension of your patent of April 10, 1843, for an improvement in the manner of constructing car wheels, &c. After a full examination of the papers and the original patent, together with the grounds on which the extension was refused, I have no hesitation in saying that I think the examiner was in error in his conclusion that the invention was not originally patentable. Had I been present at the time the matter was acted upon, I should have had no hesitation in granting the extension, if no other reason for refusing it had been presented than that contained in the two reports of the examiner."

Your committee think that the above is conclusive of the right and justice of granting the prayer of the memorialists, and have reported a bill accordingly.

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IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1860.—Ordered to be printed.

Mr. BIGLER made the following

REPORT

[To accompany bill S. 404.]

The Committee on Patents, to whom was referred the memorial and petition of Jane B. Evans, widow, executrix, and devisee of Cadwallader Evans, late of Pittsburg, in the Commonwealth of Pennsylvania, submit the following report:

The memorialist sets forth that her late husband, whose feelings of humanity had been awakened by the frequent recurrence of most disastrous calamities on our western waters, occasioned by the explosion of the boilers of steam vessels, applied himself to discover a practical and efficient preventive against these accidents. He was eminently successful in his efforts to accomplish this highly important and valuable object. In 1839 he obtained a patent for his invention, designed to insure safety to passengers on board steamboats acting on the high-pressure principle.

In 1852 he surrendered the original patent, and, with some modifications, procured another, the continuance of which, under the stringent provisions of the patent laws, could only extend to the month of April, 1853. He presented his application for an extension, which, in accordance with the same laws, was granted him an additional period of seven years, and which will consequently expire in April, 1860.

The conditions on which patents are allowed to be renewed are, that the applicant shall establish to the satisfaction of the department that his invention was original, that it has been proved by experience to be useful, and that he has reaped a benefit wholly incommensurate with the benefit which the public has enjoyed from his invention. These points were fully proved by a mass of evidence. No one was found to question the utility of Mr. Evans's invention. Its utility was proved by the concurrent testimony of the ablest scientific gentlemen in our country, and of the most experienced navigators of steam vessels. It was shown that it had been the means of preserving thousands of lives and millions of property. It was also shown that the ingenious inventor of this invaluable instrument had not derived from it a compensation more than equivalent to the wages of one of the laborers whom he had employed in the construction of his instruments. The commissioner unhesitatingly, and with great justice,

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granted the extension of the patent for the period of seven years, which was the extent to which the law authorized him to go.

That period is about expiring. This committee are satisfied that the case as now presented imperatively demands, as a simple act of justice, a further extension of the patent. Every year's experience has confirmed the evidence laid before the Commissioner in 1852, and the correctness of the judgment he pronounced upon it. The multiplication of steamboats on our western waters has proportionately increased the number of passengers and the value of the cargoes which they transport, yet, with all this augmentation, it is believed that, instead of the large amount of destruction both of life and of property which annually occurred prior to the introduction of Mr. Evans's invention, but few explosions have happened, and the committee has not been able to learn of any in which an explosion has occurred on board any vessel on which Mr. Evans's invention has been in use and properly employed.

No one has yet been known to call in question the originality of the invention.

The committee are fully satisfied that the emoluments which have been derived by Mr. Evans during his lifetime, and by his family since his death, have not only been altogether disproportionate to the benefit which he has bestowed upon the nation, but have barely compensated him for the personal labor bestowed on the fabrication of the instrument.

It might, indeed, with great reason and force be urged that an individual who has originated an invention which has already been the means of preserving thousands of valuable lives and an incalculable amount of property, deserves a more valuable testimony of national gratitude than the mere temporary extension of a patent right. Less than this the committee cannot recommend. They therefore submit the accompanying bill, which has received their unanimous concurrence, and recommend its speedy passage.

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IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1860.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany bill H. R. 267.]

The Committee on Naval Affairs, to whom was referred the petition of Ann W. Angus, widow of Samuel Angus, late a captain in the navy, and the bill H. R. 267 for her relief, have had the same under consideration, and report:

The petitioner alleges that her husband was dismissed from the service for an act committed while insane from the effects of a wound on his head, which he received while fighting the battles of his country, and asks that her family may be allowed the pay which her husband would have received if he had not been dismissed, and that her name may be placed on the pension list with those widows whose husbands have died in service of wounds received while in the discharge of their duty.

The facts of this case appear to have been fully investigated upon an application for a pension in the House of Representatives at the 1st session of the 29th Congress and 1st session 30th Congress, and reports made by the Committee on Naval Affairs, upon which petitioner's first five years' pension was obtained, and subsequently renewed, from which reports your committee beg leave to quote the following:

The House Committee, in their report of August 10, 1846, say:

"That, from an examination of all the papers in this case, it appears that the claimant is the widow of Captain Samuel Angus, formerly of the navy of the United States, and that she asks a pension on account of the services of her husband, whose death was occasioned from wounds received in the service while fighting the battles of his country. The papers show that Captain Angus entered the service at the age of fifteen, in the year 1799, and remained in the service until the latter part of Mr. Monroe's administration, when he was dismissed, without a trial by court-martial, for writing a letter to the Secretary of the Navy which was not considered respectful. It also appears that at the time of writing the letter, he was laboring under temporary insanity. President Monroe afterwards recommended his successor, Mr. Adams, to reinstate him, saying, in his letter, 'it comports with justice, as well as humanity to reinstate Captain Angus.'

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"He was not, however, reinstated, but was allowed a pension, which continued to his death, on the 29th May, 1840. During the whole period that Captain Angus was in service, up to the time of writing the letter above-mentioned, he sustained the character of a brave and meritorious officer. He was wounded in four separate engagements with the enemy, and two of those wounds were upon the head. The evidence is satisfactory to the committee that his fits of insanity were occasioned by those wounds, and that they hastened his death. These wounds were also the occasion of his being a severe sufferer, and of great affliction to his family for many years. During this time he was also unable to make any provision for them, and in consequence left a widow and six children in destitute circumstances, appealing strongly to the justice of the nation to wipe away the stain unintentionally cast upon the character of an officer who had adorned his country's service.

"The committee deem it proper to state that this claim was presented to Congress in 1843. That the committee of the Senate reported in its favor, and passed a bill; which bill was reported unfavorably by the committee of the House. The claim is now supported by additional testimony, which, it is believed, would have removed the objection of the committee of the House of that year, had it been before them.

"The committee consider this case embraced within the spirit and principle of the pension laws, and that the widow and children of this brave and meritorious officer are as much entitled to aid as though he had been killed while fighting the battles of his country.

"The committee, in their report of the 12th January, 1848, reiterate the above statement substantially, and add: 'From the facts in this case, it seems to come within the principle on which the pension laws are based. Captain Angus was disabled, by his services to the country and especially by his extraordinary sufferings, from making any adequate provision for his family; and they have been left, substantially, as if he had been cut down by death, instead of insanity, whilst fighting for his country.

"'The committee are, therefore, of opinion that Mrs. Angus is rightfully entitled to the aid of the country.'"

The Senate Committee on Pensions, in their report upon the foregoing facts, at the first session of the Thirty-third Congress, conclude as follows:

"From the state of facts thus presented, your committee are of opinion that Mrs. Angus is, in strict justice, entitled to all the benefits the pension laws would have conferred upon her, as the widow of Captain Angus, had her husband not been dismissed the service. It appears clear that Captain Angus's insanity, which led to his dismissal from the service, and disabled him from any occupation for life, resulted from wounds received in the line of his duty, which wounds ultimately produced his death. Therefore nothing but the insane act for which he was not responsible, and which led to his dismissal, has prevented his widow from claiming relief under the general statutes. It has been the custom of Congress from time to time to renew and extend for a further term all the pensions granted by existing statutes for five years. This has been done so as to continue, from the date of the allowance of such pensions under general laws, all of them so granted,

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from year to year since 1819; and the act of February 3, 1853, forms the single exception to this rule, in omitting to mention the widows and orphans of the naval service, while providing for a further five years' pension to those of the army.

"In view of all the facts presented in this case, your committee are inclined to the opinion that so much of Mrs. Angus's petition as relates to a further extension of her half pay for five years, is entitled to the favorable consideration of Congress, and they therefore report a bill to that effect, and place her on the same footing as though her husband had actually died in the service."

Captain Angus having received a pension during his lifetime, on account of his wounds, your committee do not deem it proper that his widow should receive from the date of his dismissal to the time of his death, the pay that he would have received had he remained in the navy; but concurring fully in the conclusions of the Committee on Pensions, as above recited, that the petitioner should be placed "on the same footing as though her husband had actually died in the service," beg leave to report the bill (H. R. 267) for her relief, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 196.

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1860.—Ordered to be printed.

Mr. FOOT made the following

REPORT.

[To accompany bill S. 406.]

The Committee on Claims, to whom was referred the memorial of Captain John B. Montgomery, of the United States navy, praying to be released from his liability for an unpaid balance of public money intrusted to him for recruiting purposes, and lost by the failure of the bank in which it was deposited, having had the same under consideration, adopt as their present report, the report made by this committee at the last Congress, through the Hon. Mr. Mallory, as setting forth an accurate statement of the facts upon which the claim to relief is based:

In 1841, Captain Montgomery was ordered to take charge of the recruiting service at Boston. This service involved the disbursement of public money, which was placed in his hands for that purpose. This money he, in common with other disbursing officers in that vicinity, kept on deposit in the Phœnix Bank, then regarded as a safe and reliable bank, equally by the public officers and the mercantile community. In October, 1842, the bank suddenly failed, at which time Captain Montgomery's deposits amounted to $687 95, as appears from the official statement of the receivers of the bank assets. Of this sum, $596 10 have since been paid in dividends out of the assets of the bank, and Captain Montgomery now asks that the balance of $91 85 may be passed to his credit on the books of the treasury. Acts of Congress have been passed for the relief of Pursers Wilson and Taylor, whose funds were deposited in the same institution and lost at the same time.—(See U. S. Statutes at Large, vol. 9, page 717, and vol. 10, page 847.)

The committee think the same measure of relief should be extended to Captain Montgomery, and report a bill accordingly.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 197.

IN THE SENATE OF THE UNITED STATES.

APRIL 16, 1860.—Ordered to be printed.

Mr. FOSTER made the following

REPORT

[To accompany bill S. 409.]

The Committee on Revolutionary Claims, to whom was referred the memorial of the heirs of Stephen Moylan, deceased, praying that the unsettled state of his accounts shall not be a bar to a grant of half-pay by Congress, beg leave to report:

General Stephen Moylan was a colonel in the revolutionary army in the year 1776, and was immediately afterwards directed by Congress to raise and equip a regiment of light dragoons for the continental service. Having succeeded in raising a regiment, he continued to serve, without intermission, until the close of the war, sometimes commanding his regiment in the field, sometimes acting as quarter-master-general, and at others as a volunteer aid to General Washington.

In the course of the war he had been intrusted with considerable sums of money for the purpose of equipping his regiment and paying the men, and probably for other purposes. As early as 1779 he was charged on the books of the treasurer with $98,038 67, and at the close of the war this charge remained open against him; the sums paid by him never having been entered to his credit by the accounting officers of the government.

The death of General Moylan, and the subsequent destruction of many of his vouchers, render it impossible to understand the true state of the accounts between him and the government. But there are several facts and circumstances which make it probable that the government was in his debt.

Shortly after the war, several letters were addressed to General Moylan, urging him to make prompt exhibition of his vouchers, with a view to the settlement of his accounts. In pursuance of these letters, as it is presumed, during the year 1790 General Moylan filed his account, in which he claimed a credit of £35,899 10*s.* 9*d.*, filing therewith, as vouchers, the accounts of several captains of his regiment, to whom, as appears from a letter of Peter Hagner, Esq., filed herewith and made part of this report, he had paid considerable sums of money. Subsequently he filed a second account, in which he claimed £8,478 12*s.* 1*d.*, the items of which, as appears from the last

mentioned letter, were generally supported by vouchers. These sums united amount to nearly $120,000, which would leave a considerable balance due to General Moylan.

Previously to the filing of these two accounts, the officers had been urgent in demanding a settlement. After they were filed, instead of urgency on the part of the officers for a settlement, we find them making excuses to General Moylan for their delay in the adjustment of his accounts, which he had been from time to time demanding at their hands. From this fact it may be inferred that both General Moylan and the accounting officers believed that there was a balance due him by the government. But the heirs of General Moylan do not ask payment of the balance which they believe was due to him, but only that the unsettled state of his accounts shall not be permitted to brand him as a defaulter, nor to stand in the way of the allowance by Congress of half-pay to themselves.

The line to which General Moylan was attached having accepted the commutation in lieu of half-pay for life, the committee have agreed to report a bill authorizing his accounts to be balanced at the treasury, and the allowance of five years' full pay of a colonel of cavalry.

TREASURY DEPARTMENT,
Third Auditor's Office, April 5, 1836.

SIR: In looking over the reports made by the Committee on Revolutionary Claims in the House of Representatives, received at this office this morning, I find one made by you on the 24th ultimo on the petition of the heirs of *Stephen Moylan*, and to which is appended a letter which I had the honor of addressing to you on the 7th of January, 1835, and in which I stated that, "on a register of revolutionary claims presented, it is believed, under the acts of Congress suspending for limited periods the limitation acts, I find the name of Stephen Moylan, who appears from the entry to have filed 'charges against his officer,' and is remarked in pencil, 'papers missing.'"

Now, I consider it my duty to inform you that since writing to you on the 7th of January, 1835, I have accidentally found among a large and confused mass of papers in the garret of this building, two statements of accounts rendered by Colonel Moylan. From the indorsement on one of the statements, it appears to have been rendered on the 23d of January, 1790. There is nothing to show the particular date of the rendition of the second statement, but, as the amount of the statement rendered on the 23d January, 1790, is taken up in it, there can be no doubt but what it was rendered subsequent to that date, and probably before the date of Mr. Howell's letter of the 4th of March, 1794. The statement rendered on the 23d January, 1790, amounts to £35,899 10*s.* 9*d.*, and appears to be exclusively for advances on cash paid the officers who are named as having received the money; but with the statement is filed statements of the accounts of Captains Craig, Fauntleroy, and Plunkett, (three of the officers who are charged with the money in Colonel Moylan's account, above referred to,) in which are credited considerable sums of money, with-

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out stating from whom it was received, though it may be inferred, from the circumstances, that it was received from Colonel Moylan. The second statement amounts (after deducting the amount of the first-mentioned statement, say £35,899 10*s.* 9*d.*, taken up in it) to £8,478 12*s.* 1*d.*, and purports to be for expenditures made by Colonel Moylan; and the items of said statement are generally supported by vouchers.

With great respect,

PETER HAGNER, *Auditor.*

Hon. H. A. MUHLENBURG,
Chairman Com. on Rev. Claims, House of Reps.

TREASURY DEPARTMENT,
Third Auditor's Office, October 4, 1850.

A true copy:

JOHN S. GALLAHER,
Third Auditor.

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IN THE SENATE OF THE UNITED STATES.

APRIL 17, 1860—Ordered to be printed.

Mr. WILKINSON submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of A. B. Thompson, and sundry other American citizens in California, praying relief from Congress, report:

The petitioners insist that they have just claims against the government of the United States for arms, horses, mules, saddles, bridles, spurs, cattle, blankets, beds, and bedding, &c., which were either purchased under a promise of payment by the United States officers, or taken by force, for the use of the American forces who were engaged in the conquest of California, from July, 1846, to March, 1847, as well as for other property taken or distrained by the said United States forces.

Blas. P. Alviro, one of the petitioners, heretofore filed his separate petition in the Court of Claims, where, after a full investigation of the merits of the petition, the court decided that the petitioner had no legal claim against the United States.

The ground upon which the court rests its decision is, that Frémont and his men, when they took the property, were *not* acting as members of the army or navy of the United States, but upon their own individual responsibility.

But it is claimed that the government has heretofore recognized these claims as legal by the action of Congress.

The army appropriation bill of the 31st of August, 1852, contains the following provision: "That for the pay and equipment as mounted riflemen, finding their own horses and forage, of the volunteers serving under the command of Captain John C. Frémont in California, during the year 1846, as appears by the muster-rolls on file in the War Department, and for the subsistence and supplies consumed by said volunteers in said service, $168,000 is hereby appropriated out of any money in the treasury not otherwise appropriated; and the Secretary of War is authorized and empowered to appoint three competent and disinterested officers of the army to examine and report to Congress upon all such claims as may be presented for funds advanced and subsistence and supplies of all kinds furnished or taken for the use of said command while thus engaged in the public service; and for the expenses of said board of officers the sum of $2,000 is hereby appro-

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priated." (10 Stat. at Large, p. 108.) By virtue of that provision, the Secretary of War, in September, 1852, appointed a board of officers in pursuance of the law. The board was organized in Washington city in said month of September, and its sittings were continued until the board was abolished by act of Congress of the 3d of March, 1855. (10 Stat. at Large, p. 638.)

From the final report of this board, it does not appear that the petitioners (with a very few exceptions) ever filed their claims with the said board, nor is there any excuse given or reason urged why they did not avail themselves of the benefits of the act above referred to, when their claims would have received a full and fair adjudication and settlement.

Your committee, acting upon the decision of the Court of Claims that there is no legal claim against the government in these cases, can see no good reason for the establishment of a new tribunal or board for the adjudication and settlement of these claims, and particularly as there is no excuse urged by the claimants for their not having presented their claims to the board organized in 1852 to hear and determine them.

Your committee therefore report adversely to the prayer of the petitioners, and ask leave to be discharged from the further consideration of this subject.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 199.

IN THE SENATE OF THE UNITED STATES.

APRIL 17, 1860.—Ordered to be printed.

Mr. WILKINSON made the following

REPORT.

[To accompany Bill S. 414.]

The Committee on Pensions, to whom was referred the petition of Keziah Pritchett, formerly widow of David Moore, a soldier of the revolution, praying for a pension, having had the same under consideration, beg leave to report:

That it appears from the payments or indents certified by the comptroller of the State of North Carolina, David Moore received £25 specie for services in the militia of that State during the revolutionary war. The petitioner has been allowed a bounty land warrant for one hundred and sixty acres, and now prays a pension, under the provisions of the act of 7th July, 1838, and subsequent acts, for one year's service of her husband.

Henry Southall, aged eighty-seven years, (in October, 1850,) testifies that he was acquainted with David Moore, who was a soldier of the revolutionary war; that he knew him from youth; that he entered the service under Colonel Ashe and Major Hogg; that he was marched to Hillsborough, North Carolina, and was at the battle of Eutaw Springs, and was gone nine or twelve months, and then returned to his father's, in Halifax county, North Carolina, with the brother of deponent, who was with him all the time he was gone.

Miles H. Gammons and Elizabeth Runals testify that they know David Moore, of North Carolina, was the former husband of Keziah Pritchett, who applies for a pension, and that said David Moore was a revolutionary soldier, and that, as such, he received the indents from the State of North Carolina.

The proof of the marriage, identity of the petitioner as the former widow of David Moore, and that she is now a widow, is satisfactorily established. The petitioner is now about ninety years of age.

After a careful investigation of the evidence presented, your committee are of opinion that the application of the petitioner for a pension is one that deserves the favorable consideration of Congress, and, therefore, report a bill.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 200.

IN THE SENATE OF THE UNITED STATES.

APRIL 17, 1860.—Ordered to be printed.

Mr. WILKINSON made the following

REPORT.

[To accompany Bill S. 415.]

The Committee on Claims, to whom was referred the memorial of Jonathan Ely, legal representative of Edward Ely, deceased, late United States consul at Bombay, have had the same under consideration, and report:

It appears from the petition and evidence before the committee, that on the 1st of April, 1855, the petitioner was employed in the Indian Bureau, to assist in bringing up the business of one of the desks in that department. That he was so engaged for the term of two months, at the end of which, the clerk in charge of the desk, Mr. C. L. Lombard, was transferred to the land division, leaving the entire business of the recording desk to be performed by the petitioner.

It also appears that the petitioner performed all the duties of this desk from the 1st June, 1855, to 1st February, 1857, for which he has received no pay.

It is the opinion of the committee that the petitioner should only be allowed pay from the time Mr. Lombard was transferred from the recording desk, which was the 1st June, 1855.

It appears from the letter of Hon. Charles E. Mix, at the time Acting Commissioner of Indian Affairs, that the services set forth in the petition were faithfully performed, and that the services were necessary.

Your committee therefore report a bill allowing the petitioner $100 per month from the 1st June, 1855, to 1st February, 1857, this being the lowest grade of salary allowed any clerk in the employ of the Indian Bureau.

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IN THE SENATE OF THE UNITED STATES.

APRIL 17, 1860.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 411.]

The Committee on Foreign Relations, to whom was referred the memorial of Jonathan Ely, legal representative of Edward Ely, deceased, praying that the accounts of said Edward Ely, as United States consul at Bombay, may be settled on just and equitable principles, have had the same under consideration, and report:

It is stated by the Department of State, that the decedent had been in the service of the United States, as consul at Bombay, for a period of seven years, immediately preceding his death, and that he had discharged his official duties with ability, and to the entire satisfaction of the general government.

His consular accounts with the government had been settled with the government to the 1st of July, 1856, and the balance due him paid to his order.

It would appear, however, that, owing to the rebellion in India, the correspondence of the decedent with the Department of State, in most instances, failed to reach this country, and it became, therefore, impossible for the decedent to communicate with his government regularly, during the interval between the last settlement of his accounts and the date of his death.

Immediately after his death, Hollis Moore, Esq., the vice-consul at Bombay, forwarded all the vouchers and other papers of the decedent to the United States; but the vessel by which they were sent was lost at sea, and the papers and vouchers with her.

As no materials exist for the settlement of the consular account of the decedent, according to the rules of the department, the committee can only recommend that the prayer of the memorialist be granted; and that the Secretary of the Treasury be authorized and directed to settle and adjust the accounts of the decedent, as United States consul to Bombay, upon just and equitable principles.

The committee herewith report a bill accordingly.

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IN THE SENATE OF THE UNITED STATES.

APRIL 18, 1860.—Ordered to be printed.

Mr. PUGH made the following

REPORT.

[To accompany Bill S. 417.]

The Committee on the Judiciary, to whom was referred the petition of John Cradlebaugh, one of the justices of the supreme court for the Territory of Utah, have considered the same, and now report:

The nature of this claim sufficiently appears from the petition and account herewith submitted.

The committee are of opinion that such an expenditure was necessary in the circumstances, and ought to be reimbursed to the petitioner, but refer the adjustment of the claim to the proper executive officer.

A bill is reported accordingly.

PETITION.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The petition of John Cradlebaugh respectfully represents: That petitioner, when he entered upon the discharge of his duties as one of the associate justices of the supreme court of the Territory of Utah, was assigned a district in the Mormon settlements at the western base of the Wasatch chain of mountains, his district extending from Salt Lake county to New Mexico.

That the territorial legislature of said Territory, at its session of 1858–59, redistricted the Territory for judicial purposes, creating a district in the western part of the Territory, to which district your petitioner was assigned.

That the legislature made no provision for the removal of the press and seal, record books that had been provided for that district, judge's library, and files necessary to be removed, nor did they provide for any payment of the expenses of such removal.

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That the marshal of the Territory being about to resign his office, refused to have said effects removed; and the governor of the Territory declared to your petitioner that he had no money at his control to pay for the transportation of said effects.

Petitioner says a term of court had been fixed for said district, and it became necessary that said effects should be removed to the place of holding court.

Petitioner says that the land records for the counties of Carson, Humboldt, and St. Mary's had been removed from Genoa to Salt Lake City, and it was desirable that they should be transported back to their proper locality.

Petitioner says that on the Upper Humboldt several murders had about that time been committed, and the route was looked upon as quite unsafe. That on account of having said government property, together with said land records, a guard was supposed to be necessary.

That there being no other means of having said property transported, petitioner, with his own means, bought an outfit, purchased grain, hired drivers, and transported said property, together with a guard, as stated in the account hereto attached.

Petitioner says the guard was furnished by General Johnston, from soldiers whose time of service would expire about the time of their arrival in California, and who desired to go there, and would not desire to return. That the general declined to furnish transportation, for reasons not made known to petitioner, but as petitioner supposes, that the expense and risk in the outward trip and return would be very great—animals being usually worn out with one trip over those deserts.

Your petitioner says that he also had to send said guard from Genoa to Sacramento city, in California.

That if he had been enabled to get his mules through in good condition, he no doubt would have realized sufficient to compensate him for his outlay and expense. That on account of the scarcity of grass on the road, occasioned by the great emigration, and the bad water, he lost several. That in spite of the vigilance of the guard, others were stolen; and that his expense and loss is as stated in the claim herewith filed.

Petitioner says his claim is just, and that his loss should be made good to him. For which he earnestly and sincerely prays, &c.

JOHN CRADLEBAUGH.

The United States to John Cradlebaugh, Dr.

September 1, 1859, to transporting books, papers, press, library, &c., of the second judicial district court of Utah Territory, together with land records, and a guard of eleven men, with their provisions and other outfit, from Salt Lake City and Provo City, through an Indian country, to Carson City, weight in all 4,000 pounds, distance 700 or 800 miles, $1,000.

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TERRITORY OF UTAH, *Carson county, ss.*

John Cradlebaugh, being duly sworn, says that the Legislature of the Territory of Utah, at its last session, passed an act so districting the Territory for judicial purposes that it became his duty to remove his place of holding court from Provo City, on Utah Lake, to Genoa, in Carson county, in the west part of the Territory; that the legislature made no provision for the removal of the files, record books, and remnant of library belonging to the office, or for the payment of the transportation of the same; that the marshal of the Territory being about to resign his office, declined to take charge of, and remove the effects of the office; that affiant purchased teams with his own money, and transported the effects of the office, &c., together with a guard as stated in the account; that the expenses of the removal, together with the stock of affiant which died on the road and that stolen, was a loss to affiant of $1,300 or $1,400. Affiant further says that, at the lowest rate charged for transportation in this country, the like service could not be contracted to be done for less than $1,000. Affiant states further that it was not his intention at the time he undertook to do the service, to charge for the transportation of the same, but losing five mules used therein, by disease prevailing among stock along the route, and by theft, &c., affiant believes he should be paid at least the reasonable sum which the transportation would have cost if the same had been done with ox-teams, on contract, at the lowest rates in this country. He further says that, unless he is paid by the federal government, he will receive no compensation for the service rendered, as we have no county organizations in the district, and nothing to be expected from Mormon legislation.

Affiant therefore asks that his claim be paid, &c.

JOHN CRADLEBAUGH.

Sworn to, and subscribed before me this December 4, 1859.

ALFRED JAMES,
Clerk U. S. District Court third judicial district, Utah Ter.

We, citizens of Carson valley, being acquainted with the route, and expense of transportation over the same, and the incident risk, believe the above account to be reasonable and just.

JAMES B. BLAKE,
A. C. PLUMMER,
S. J. SINGLETON,
T. F. SMITH,
J. B. CRANDELL,
JOHN L. BLACKBURN.

I concur in the above statement.

CHARLES E. SINCLAIR,
Associate Justice Supreme Court, Utah Territory.

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I am acquainted with the route traveled by Judge Cradlebaugh, stated in the within; was at Genoa when he arrived, and saw the effects transported; believe there was a necessity of his having a guard at that time on the road, on account of the Indians, several persons having been murdered by them during the time he was on the road; and believe that he should be paid the entire losses sustained by him. He further, to my knowledge, sent his escort, at his own expense, to Sacramento, California, at a great loss and expense.

F. DODGE,
United States Indian Agent.

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36th Congress, 1st Session. | SENATE. | Rep. Com. No. 203.

IN THE SENATE OF THE UNITED STATES.

April 18, 1860.—Ordered to be printed.

Mr. Grimes made the following

REPORT.

[To accompany Bill S. 291.]

The Committee on Pensions, to whom were referred the petition and Senate bill No. 291, *for the relief of Mary Preston, widow of George Preston, beg leave to report:*

That it appears from the records of the War Department the husband of petitioner served in the United States army as private, sergeant, and ordnance sergeant, for above thirty-six years, continuously, and died at Fort Smith, Arkansas, February 7, 1859.

The widow now prays a pension. The committee, therefore, report back the accompanying bill for her relief, without amendment, and recommend its passage.

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36TH CONGRESS, 1st Session. | SENATE. | REP. COM. No. 204.

IN THE SENATE OF THE UNITED STATES.

APRIL 18, 1860.—Ordered to be printed.

Mr. PUGH submitted the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of Jeffrey T. Adams, late clerk of the district court of the Territory of Minnesota, have fully considered the same, and now report:

The petitioner alleges that, on the 18th day of August, 1853, he was appointed clerk of the district court for the Territory of Minnesota; that he accepted the said appointment, and remained in office, discharging his duties as clerk, until the 17th of July, 1855. He alleges, also, that the fees of his clerkship did not amount to five hundred dollars annually, and that he is therefore entitled to the benefit of the act regulating fees and costs, approved February 26, 1853, section third:

"That when the compensation of any clerk shall be less than five hundred dollars *per annum*, the difference ascertained and allowed by the proper accounting officer of the Treasury, shall be paid to him therefrom."—*Statutes at Large, volume* 10, *page* 166.

The *first* section of that act is limited to the clerks of district and circuit courts of the United States "in the several States," although the language of the third section would seem to be universal in its application. At all events by a clause in the twelfth section of the civil and diplomatic appropriation act, approved March 3, 1855, the entire act of February 26, 1853, is extended to the Territories of Minnesota, New Mexico, and Utah, as if therein at first named. "This clause," it says, "to take effect from and after the date of said act, and the accounting officers will settle the accounts within its purview accordingly."—*Statutes at Large, volume* 10, *page* 671.

The question remains, whether the appointment of the petitioner, as clerk, was or was not a rightful appointment; that he was clerk, *de facto*, from the 18th of August, 1853, until the 17th of July, 1855, and that all his official acts are valid, so far as they regard the interests of third persons, the committee do not hesitate to acknowledge; but, whatever his claim to fees allowed by law for the discharge of particular services toward a party litigant, or any other individual, he could have no claim (unless rightly appointed) to the salary or compensation

payable by the government to a public officer; that inheres in the office itself, arises from a valid appointment, and does not depend on the performance of any service whatsoever.

The ninth section of the act "to establish the territorial government of Minnesota," approved March 3, 1849, declares—

"The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. * * * * * * Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held."—*Statutes at Large, volume* 9, *page* 406.

Evidently this contemplated that *one* place should be designated for holding a district court in each district, and that each court should have one clerk. It seems that Judge Chatfield construed the statute differently, and appointed several persons, including the petitioner, to the same office of clerk, within his district. The committee see no pretext on which these appointments can be defended, and certainly do not acknowledge the right of Judge Chatfield to burden the government with such an additional expense for the administration of justice. The division of the clerk's office into several parts, by a plurality of appointments, induced the very effect of charging upon the treasury of the United States a deficiency in the emoluments of that office; and the claim now made that each appointee should be allowed the difference between five hundred dollars and the amount of fees which he received under the act of February 26, 1853, raises a suspicion, at least, of abuse rather than of misapprehension.

The petitioner lays much stress on the amendatory act of August 16, 1856, section tenth:

"That it shall be the duty of each of the judges of the supreme court of the respective Territories of the United States to designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and to designate and retain but one such clerk, where more than one is already appointed, and only such district clerks shall be entitled to a compensation from the United States, except for fees taxable to the United States."—*Statutes at Large, volume* 11, *page* 50.

"As this law could apply only to the future," says the memorial, "Congress thus recognized the existence of more than three clerks as having been employed for a short time in Minnesota by the district courts, but abolished the arrangement for the future."

This conclusion, as the committee think, is altogether fanciful. Assuredly, the act does recognize "*the existence*" of more than one person claiming to be clerk in each judicial district; but, treating that as an abuse of the power of appointment by territorial judges, not only forbids the repetition of it, but requires all such appointments previously made, except one, to be canceled. And, as if to take away the temptation which led to that abuse, the next section (eleventh) repeals so much of the act approved February 26, 1853, as authorizes any clerk

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to receive from the treasury of the United States the difference between five hundred dollars *per annum* and the amount of his fees or taxable costs.

The petition received all the fees taxable by law for the services which he rendered as clerk, from the 18th of August, 1853, until the 17th of July, 1855, thereby intruding into a public office, and compelling the government of the United States to supply the deficiency in its emoluments caused by such intrusion. The committee are of opinion that his present claim is alike destitute of merit and of legal sanction; and therefore recommend that the prayer of the petitioner be not granted.

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